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FILED
San Francisco County Superior Court

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

CATHERINE DALE-JABLONOWSKI and
MARNIE FREUND BEAMESDERFER,
individually and as successors-in-interest to the
Estate of JUDITH DALE,

Plaintiffs,

vs.

UNIVERSITY OF CALIFORNIA BOARD OF
REGENTS; UCSF HEALTH; UCSF MEDICAL
CENTER; UCSF HELEN DILLER FAMILY
COMPREHENSIVE CANCER CENTER;
CHLOE ATREYA, MD; and DOES 1 - 100,
inclusive,

DEFENDANTS.

Case No. **CCC-17-560014**
COMPLAINT FOR DAMAGES

1. Elder Adult Abuse/Neglect;
2. Negligent Infliction of Emotional Distress
3. Misrepresentation/Fraud
4. Negligence
5. Survivorship

JURY TRIAL DEMANDED

BY FAX
ONE LEGAL LLC

CATHERINE DALE-JABLONOWSKI and MARNIE FREUND BEAMESDERFER,
individually and as successors-in-interest to the Estate of JUDITH DALE (collectively "Plaintiffs")
allege as follows against the UNIVERSITY OF CALIFORNIA BOARD OF REGENTS; UCSF
HEALTH ; UCSF MEDICAL CENTER; UCSF HELEN DILLER FAMILY COMPREHENSIVE
CANCER CENTER; CHLOE ATREYA, MD; and DOES 1 - 100 (collectively "DEFENDANTS"):

INTRODUCTION

1. In May 2016, JUDITH DALE (referred to herein as "Judy") was diagnosed by
oncologist CHLOE ATREYA, MD with Stage IV colorectal cancer, with metastasis in her liver and

1 lungs. Judy was advised that the cancer was not curable; treatment would be palliative, rather than
2 curative. Judy entered hospice care. Judy had served as primary caregiver to her mother when her
3 mother was dying of cancer. She knew what the final ravages of terminal cancer entailed, and she
4 knew she did not want to endure them. Judy was a supporter of the enactment in California of the
5 End of Life Option Act, Health and Safety Code §443.13("EOLOA"), which took effect on June 9,
6 2016. As defined on UCSF's website, the EOLOA "allows patients who have a terminal disease
7 (with a life expectancy of six months or less) to request a life-ending drug prescription from their
8 doctor." This practice is known as aid in dying. Judy met all of UCSF's requirements for obtaining
9 aid in dying. According to UCSF's Director of Risk Management, UCSF had worked "from
10 February 2016 to implement policies and procedures for patients seeking UCSF doctors to
11 participate in the law."¹

12 2. Over the summer of 2016, Judy's terminal colorectal cancer advanced. Judy suffered
13 increasing pain, obstruction of and bleeding from her rectum, and other distressing symptoms. She
14 knew her death was near. Judy repeatedly informed doctors and social workers at UCSF of her
15 intention to achieve a peaceful death via aid in dying, and repeatedly requested their reassurance that
16 they would participate; which they gave her over and over. Judy was shocked to learn from her
17 UCSF Social Worker on approximately August 18, 2016 that her doctors had decided to deny any
18 eligible patient who requested aid in dying this compassionate end of life option, notwithstanding
19 their many prior representations that they would provide it. After caring for her as an inpatient
20 throughout the summer of 2016, DEFENDANTS discharged Judy to her home to die without their
21 assistance.

22 3. Judy's wish for a peaceful death through aid in dying was denied her by the decision
23 of DEFENDANTS not to participate in EOLOA, and DEFENDANTS' conscious choice to suppress
24 and conceal this decision from Judy, with knowledge of the serious harm this would cause her. Judy

25 _____
26 ¹ <http://www.mercurynews.com/2016/09/17/terminally-ill-californians-struggling-to-find-doctors-to-help-with-aid-in-dying/>

1 moved swiftly to mitigate DEFENDANTS' neglect, and immediately tried to find another physician
2 who would prescribe the aid in dying medication under EOLOA, but was unable to find
3 DEFENDANTS' replacement in time. Every day until her death Judy asked her daughters if it was
4 the day she could obtain the aid in dying medication and achieve the peaceful death as she had
5 hoped, but they had to tell her no, not yet, as the waiting period was still running following the
6 initiation of care from the new physician. Judy's final weeks were brutal; the cumulative burden of
7 suffering she was forced to endure due to DEFENDANTS' refusal to fulfill the commitment they
8 had made to her to support her decision for aid in dying was extreme. Judy died on September 13,
9 2016, after enduring suffering she fervently hoped to avoid, and had planned to avoid by expressing
10 her wish and intention to die peacefully via aid in dying and receiving affirmation from her care
11 team that her wish would be respected. She did not want to die in a diaper, bleeding from her rectum
12 and urinary tract, in pain unless sedated to the point she was too confused to say goodbye to her
13 family. But this horrific death was forced upon her by DEFENDANTS' actions.

14 PARTIES

15 4. Plaintiff CATHERINE DALE-JABLONOWSKI was and is at all times herein
16 mentioned a resident of the County of Marin, State of California; Plaintiff MARNIE FREUND
17 BEAMESDERFER was and is at all times herein mentioned a resident of the County of Monroe,
18 State of Pennsylvania. Decedent Judy was at all time herein mentioned a resident of the County of
19 San Francisco, State of California.

20 5. Plaintiffs CATHERINE DALE-JABLONOWSKI and MARNIE FREUND
21 BEAMESDERFER are the children of decedent Judy, and are Successors-in-Interest to the Estate of
22 Judith Dale pursuant to Code of Civil Procedure sections 377.11 and 377.32.

23 6. Plaintiffs allege, upon information and belief, that the UNIVERSITY OF
24 CALIFORNIA BOARD OF REGENTS and UCSF HEALTH ("UCSF") own and operate UCSF
25 MEDICAL CENTER at Mount Zion located at 1600 Divisadero Street, San Francisco, California,
26 including UCSF HELEN DILLER FAMILY COMPREHENSIVE CANCER CENTER; and that
27 CHLOE ATREYA, MD and Judy's UCSF Social Worker(s) were at all times herein employees

1 and/or managing agents of UCSF (referred to collectively herein as “DEFENDANTS”).
2 DEFENDANTS are in the business of providing care. At all times material hereto, DEFENDANTS
3 were located and doing business in the City and County of San Francisco, and are citizens of the
4 State of California.

5 7. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate,
6 associate or otherwise and the true involvements of those DEFENDANTS named and sued herein as
7 Does 1 through 100, and for that reason have sued said DEFENDANTS by such fictitious names.
8 Plaintiffs will seek leave to amend this complaint to reflect their true names when ascertained.
9 Plaintiffs are informed and believe, and accordingly allege, that each of the DEFENDANTS sued
10 herein as Does 1 through 100 is responsible in some manner for the occurrences alleged in this
11 action and that these DEFENDANTS proximately caused the harms suffered by Plaintiffs.

12 8. Plaintiffs are further informed and believe, and accordingly allege, that at all relevant
13 times each of the DEFENDANTS was the employer, employee, agent, servant, alter ego, principal,
14 or subsidiary of DEFENDANTS and at all times acted within the course and scope of such
15 employment or agency and with the knowledge and approval of said co-DEFENDANTS, and/or
16 was involved in a joint venture or partnership with DEFENDANTS. In particular, at all times
17 material hereto, DEFENDANTS individually and through their officers, directors, and/or managing
18 agents, (i) had advance knowledge of the unfitness of their employees and employed said employees
19 with a conscious disregard of the rights and safety of others, (ii) authorized the wrongful conduct
20 alleged in this complaint, and/or (iii) were personally guilty of oppression, fraud, malice and/or
21 recklessness.

22 JURISDICTION AND VENUE

23 9. This Court has jurisdiction under Code of Civil Procedure §410.10. Plaintiffs’
24 damages exceed the jurisdictional minimum of this Court.

25 10. Venue is proper in San Francisco County under Code of Civil Procedure §395(a) and
26 Civil Code §1780(c), because DEFENDANTS are doing business in and are located in the County
27 of San Francisco, California.

1 FACTUAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION

2 11. In May 2016 Judy was diagnosed with terminal Stage IV colorectal cancer by
3 CHLOE ATREYA, MD. From the time she was diagnosed with an incurable cancer,
4 DEFENDANTS, and each of them, had a substantial caretaking and custodial relationship with
5 Judy, involving on-going responsibility for the care of Judy during the process of her treatment and
6 dying, including the period she was an inpatient at UCSF during the summer of 2016.

7 12. After her diagnosis by DEFENDANTS, Judy clearly and repeatedly requested aid in
8 dying under EOLOA, and told DEFENDANTS that she would not start treatment with them unless
9 they would respect and help facilitate, her right to achieve a more peaceful death via aid in dying.
10 DEFENDANTS’ staff repeatedly agreed to respect and assist her with her request for aid in dying.
11 DEFENDANTS’ own documentation shows that Judy spoke regularly with the UCSF Social
12 Workers and her other providers at UCSF about her wishes to achieve a more peaceful death via aid
13 in dying. Judy was told, and in the alternative led to believe, that she would be provided the
14 necessary prescription for aid in dying.

15 13. Judy met with CHLOE ATREYA, MD on approximately June 8, 2016, at which time
16 she informed CHLOE ATREYA, MD that she wished to obtain the aid in dying medication.
17 CHLOE ATREYA, MD referred her to Michael Rabow, MD, Director of UCSF’s Symptom
18 Management Service. During his care of Judy on June 24, 2016, 16 days after the Judy’s first
19 request as required under the EOLOA, Michael Rabow, MD noted in DEFENDANTS’ records that
20 Judy “wanted to end her life with EOL options.” Judy was not told that her wish for aid in dying
21 would not be respected or facilitated by her providers at UCSF.

22 14. On July 18, 2016, during an in-patient admission to the hospital, DEFENDANTS
23 noted in its records that Judy “brought up her support and interest in ‘Compassionate Care’ –
24 specifically inquiring about medications that might help hasten her death. She says she’s discussed
25 this before with her outpatient oncologist, Dr. Chloe Atreya.” Further, a UCSF physician noted that
26 “At this point, she has expressed her interest twice to an MD, and this is documented. The next steps
27 are to put it in writing and be evaluated by two different MDs and a psychiatrist or psychologist. ...

1 Patient will follow up with social worker from oncology office to complete these various
2 requirements” and “our attending will pursue the documentations for Compassionate Care.” A “Day
3 of Discharge Management” note stated “Of note, she did request Ca EOLA during this admission.
4 Information was given to her, and Risk Management informed.” Judy was not told she could not
5 obtain aid in dying at UCSF. In a letter to Judy of the same date, three UCSF staff informed Judy:
6 “While here we also discussed at length your interest in the new California law called
7 “Compassionate Care,” regarding physician assisted dying. We understand that these are not new
8 sentiments for you and support your right to self determination. We have documented your interest
9 in this in our notes and you should follow up with your oncology social worker in 14 days or more
10 as a second benchmark, as the next step in fulfilling the requirements.” She again was not told she
11 could not obtain aid in dying at UCSF. Indeed she was told, as this letter indicates, that her right to
12 self determination would be supported. Each time Judy met with her UCSF Social Worker she
13 reiterated her desire for aid in dying. She was not told this was not an option for her at UCSF so she
14 remained a patient at UCSF, as this was of utmost importance to her. UCSF could not help her live,
15 but she believed, based on representations of her care providers, that it could help her achieve a
16 more peaceful death through aid in dying.

17 15. After a short discharge, Judy was readmitted to UCSF from July 28, 2016 through
18 August 6, 2016. Throughout this admission, UCSF physicians again repeatedly noted in Judy’s chart
19 her desire for aid in dying, and that the UCSF Social Worker was meeting with Judy to discuss the
20 EOLOA. DEFENDANTS noted on July 29th: “Previously, patient has expressed interest in both the
21 inpatient and outpatient setting for compassionate care.” On August 3rd DEFENDANTS noted that
22 Judy “was seen yesterday by the palliative care social worker to discuss EOLA options and is very
23 motivated to pursue this. She said that ‘I feel like you have only really have one thing in life that’s
24 your own, and that’s your life.’ She feels that having access to end of life medication would make
25 her feel comforted that ‘when the time comes, I can use it if I need it.’” A palliative care consult was
26 requested by her primary team to discuss the EOLOA on August 3, 2016, and again DEFENDANTS
27 noted in their records that Judy was “very motivated to pursue EOLA options.” Further, it was noted

1 that the “[Social worker] discussed EOLOA with pt, discussions to be continued with PMD and
2 oncologist.” Judy was never informed that her clear wish for aid in dying would not be respected by
3 her care team at UCSF by anyone on her team until August 18, 2016.

4 16. On August 18, 2016, UCSF’s managing agent, Director of Symptom Management
5 Services, Michael Rabow, MD met with Judy and her daughter, and reiterated in his notes that Judy
6 “wants EOLOA if suffering.” However, on that same date, Plaintiffs and Judy were shocked to learn
7 that in fact, although DEFENDANTS knew of her repeated requests and proactively discussed her
8 requests for aid in dying and lead Judy to believe it would be available to her, DEFENDANTS had
9 made a decision to refuse to follow through on their promise of aid in dying for Judy. When they
10 made the decision, DEFENDANTS knew there were patients at UCSF, including Judy, who had
11 expressed the desire for aid in dying, but did nothing to identify these patients and immediately
12 inform them of the decision. This failure to immediately contact and inform Judy (and any/all others
13 similarly situated) was cruel, reckless, and malicious.

14 17. DEFENDANTS represented to the public, and continue to do so, on their website,
15 that if a doctor does not participate in EOLOA, “your social worker will assist you in finding a
16 doctor who has agreed to participate in the act.” This was not true.

17 18. The Symptom Management Services team promised patients in its marketing
18 materials that it will work “directly with your cancer specialist to keep him or her informed of your
19 medication and symptom management needs that you discuss with us.” Judy was not given the truth
20 that DEFENDANTS would NOT assist her with aid in dying before it was too late for her to change
21 service providers and have her wish respected by her new physician.

22 19. When DEFENDANTS finally informed Judy that they in fact would not provide aid
23 in dying, it was too late into her terminal illness for her to transfer care to a new provider, establish a
24 new relationship, fulfill the process required by the EOLOA and obtain the medications in time to
25 use them. Upon finally learning of Defendants’ decision to opt out of providing aid in dying Judy
26 and Plaintiffs had to begin an urgent panic-filled search for a physician who would be willing to do
27 what DEFENDANTS had led her to believe would be provided as part of DEFENDANTS’ care and

1 services. Judy moved swiftly in her effort to ensure she would be able to access aid in dying,
2 immediately searching for another physician who would prescribe the aid in dying medication. On
3 August 29, 2016, contact was made with a willing physician; the initial visit with that doctor took
4 place on August 31, 2016 at Judy's home at which time the clock started running over again on the
5 statutorily mandated 15 day waiting period. Unfortunately, it was too late for Judy. Every day until
6 her death Judy repeatedly asked her daughters if it was the day she could obtain the aid in dying
7 medication; but the 15 day waiting period had not yet expired, her daughters had to tell their mother
8 that she could not yet have the medication which would enable her to achieve a peaceful death as
9 she wished. Judy died just one day shy of the 15th day, precisely the way she did not want to die, in
10 bed, in a diaper, bleeding from her rectum and urinary tract, too confused by pain medications
11 needed to manage the excruciating pain of terminal colorectal cancer to say goodbye.

12 20. Plaintiffs allege, upon information and belief, that the misconduct of DEFENDANTS
13 which injured Judy, as alleged herein, was the direct result and product of the financial and control
14 policies and practices forced upon the UCSF by the financial limitations imposed upon the UCSF by
15 and through its officers, directors and managing agents. Plaintiffs allege, upon information and
16 belief, that DEFENDANTS knew that if Judy had known DEFENDANTS would not comply with
17 her end of life wishes, she would have gone to a different medical provider for her intensive
18 expensive in-patient cancer treatment.

19 21. At a minimum, when the unfortunate decision was made to deny Judy's request for
20 aid in dying, and abandon her at a crucial moment in her care, DEFENDANTS had a duty and
21 responsibility to immediately inform Judy of the decision; they did not do so. This caused Judy
22 irreparable grievous harm. Had DEFENDANTS promptly informed Judy that a decision had been
23 made to deny patients the choice for aid in dying, she would have had time to transfer care,
24 complete the waiting period, obtain the medications and achieve a peaceful death as she so very
25 much wished and was entitled to under California's End of Life Option Act. Instead,
26 DEFENDANTS did not promptly inform Judy that they would not honor her wish, after having
27 previously represented to her they would, until it was too late for her to find another physician who

1 was willing. Although she acted quickly, she simply did not have time to find such a physician,
2 transfer care, and complete the process, including the waiting period, before her death.

3 22. DEFENDANTS made a conscious choice to accept Judy’s care and custody with the
4 knowledge that the DEFENDANTS would not carry out Judy’s request for aid in dying, which
5 would cause serious harm to Judy during her dying process. DEFENDANTS suppressed, and/or
6 failed to timely disclose, key information from Judy while she was in DEFENDANTS’ care and
7 custody as an inpatient. DEFENDANTS’ misrepresentations, concealment and nondisclosure
8 proximately caused her injuries, as described herein.

9 23. DEFENDANTS’ managing agent, the Director of risk management at UCSF,
10 informed the San Jose Mercury news in an article published September 17, 2016 that the hospital
11 “has worked since February to implement policies and procedures for patients seeking UCSF
12 doctors to participate in the law.” However, at the time that Judy was admitted to UCSF,
13 DEFENDANTS knew that they had no system in place to inform Judy, or any of the other patients
14 who Plaintiffs are informed and believe were in the process of asking about the law at that time, of
15 the change in policy regarding EOLOA, and the operation of UCSF was neither designed,
16 administered, nor funded in a manner reasonably necessary to provide adequate care, oversight and
17 integration of Judy’s rights under the EOLOA into her care at UCSF. DEFENDANTS and their
18 managing agents had knowledge of, ratified and/or otherwise authorized all of the acts or omissions,
19 which caused the injuries to Judy.

20 24. DEFENDANTS and their managing agents knew that their operation was designed in
21 a manner so as to maximize profitability by circumventing the legal duty to assure the health, safety
22 and oversight of residents such as Judy, and, in particular, the duty to provide oversight and
23 management of Judy during her residency at UCSF. That knowledge was exclusively in the
24 possession of DEFENDANTS and their managing agents. Neither Judy nor her family had any such
25 knowledge, or the opportunity to obtain such knowledge and information. Judy and her family
26 believed that DEFENDANTS’ business operations were, as represented by DEFENDANTS,
27 properly run in compliance with state and federal regulations and with DEFENDANTS’ own policy

1 representations. In particular, they understood that the management and staff of UCSF were
2 “experts” and were readily familiar, capable, able and committed to the care and oversight of
3 residents such as Judy.

4 25. DEFENDANTS, and each of them, had responsibility for timely informing Judy that
5 they would not comply with her request after she had repeatedly requested aid in dying.
6 DEFENDANTS denied and withheld goods or services necessary to meet Judy’s needs under
7 EOLOA, aid in dying that by definition Judy was unable to provide herself, after DEFENDANTS
8 had led Judy to believe they would provide such service. DEFENDANTS denied and withheld this
9 care and service to Judy despite the knowledge that by doing so, injury was substantially certain to
10 befall Judy or with conscious disregard of the high probability of such injury. The DEFENDANTS’
11 reckless denial and withholding of this information to Judy and her family caused her injury and her
12 painful death and mental suffering as described herein.

13 26. Specifically, DEFENDANTS, and each of them, recklessly failed to take necessary
14 precautions to ensure that Judy and her family would be informed of their decision not to provide
15 aid in dying, and these failures caused grievous injury. DEFENDANTS failed to provide Judy with
16 supervision and assistance that she required, which caused her injury. DEFENDANTS failed to
17 implement timely and adequate interventions, which caused her injury and her painful death, which
18 conflicted with her strong preference for a more peaceful death via aid in dying, and mental
19 suffering as described herein.

20 27. At all times relevant, DEFENDANTS, and each of them, knew of Judy’s inexorably
21 advancing terminal cancer and the critical need to inform her once a decision had been made to
22 refuse to assist her in aid in dying. However, DEFENDANTS recklessly failed to care for Judy
23 despite her worsening condition, and her repeated requests for aid in dying. DEFENDANTS’
24 conduct, as detailed herein, was reckless and in conscious disregard of Judy’s rights and safety.

25 28. Further, DEFENDANTS violated state and federal regulations and their own policies
26 by failing to give Judy the right to information about her plan of care, and violated their own
27 policies regarding their participation in the EOLOA. DEFENDANTS represent on their website that

1 “if your doctor does not feel comfortable using the act, your social worker will assist you in finding
2 a doctor who has agreed to participate in the act.” These regulations and policies were recklessly
3 violated in conscious disregard of Judy’s rights, goals and safety, and caused her injury and her
4 painful death and mental suffering as described herein. DEFENDANTS’ website still makes this
5 false and misleading representation, even with knowledge of what happened to Judy, thereby
6 ratifying this behavior.

7 **FIRST CAUSE OF ACTION**

8 **(Elder Abuse/Neglect)**

9 29. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs
10 to this cause of action as though fully set forth herein.

11 30. At all times mentioned herein, DEFENDANTS were providing for the care and
12 custody of Judy and were “care custodians” within the meaning of §15610.17 of the Elder Abuse
13 and Dependent Adult Civil Protection Act (Welfare and Inst. Code § 15600 et seq; “EADACPA”).
14 Judy had a long-term, inpatient relationship with DEFENDANTS, and DEFENDANTS had
15 accepted the responsibility to diagnose and treat her incurable terminable cancer and related pain
16 and suffering.

17 31. At all times relevant to this action, Judy was an elder as defined by Welfare & Inst.
18 Code § 15610.27. Judy, who was seventy-seven years-old, was at all times relevant substantially
19 more vulnerable than other members of the public to the conduct of the DEFENDANTS because of
20 her age, advanced terminal illness, restricted mobility and disability, and Judy actually suffered
21 substantial physical, emotional, and/or economic damage resulting from the conduct of
22 DEFENDANTS, as described above.

23 32. During the time she was a resident at UCSF, Judy was neglected and abandoned by
24 her care custodians at UCSF within the meaning of Welfare & Inst. Code § 15610.57, as set forth
25 herein. Further, DEFENDANTS recklessly failed to provide Judy with aid in dying to enable her to
26 avoid pain and suffering she wished to avoid, failed to provide information she needed to make an
27 informed decision about her care at UCSF, and repeatedly, fraudulently and knowingly

1 misrepresented to Judy that they would provide such care and services under the EOLOA;
2 concealing from her their decision not to provide such care and services until it was too late to
3 prevent harm to her.

4 33. DEFENDANTS made a corporate decision not to provide aid in dying to Judy and
5 other patients, and the corporate managing agents did nothing, even with knowledge of the neglect.
6 These managing agents knew or should have known of the lack of proper information and assistance
7 to their patients, and of the lack of training provided to UCSF staff regarding EOLOA.
8 DEFENDANTS and their managing agents clearly knew there was no system in place to protect
9 patients' rights under the EOLOA and knew of the harm to patients when crucial information is
10 withheld from them regarding UCSF's willingness to participate in EOLOA. Despite
11 DEFENDANTS' conscious knowledge of these conditions, the managing agents did not take
12 appropriate and adequate steps to prevent and correct them, and they did not inform Judy or her
13 family, including the Plaintiffs, of what they knew about these dangerous conditions, causing Judy
14 physical pain and mental suffering during her dying process.

15 34. DEFENDANTS had a duty to treat Judy honestly in regard to her end of life wishes,
16 and not conceal, fail to disclose, or suppress critical information. Said DEFENDANTS had a duty
17 to employ staff adequately trained in the EOLOA. Yet DEFENDANTS failed to provide care and
18 services sufficient to meet Judy's physical and mental health needs and failed to protect her from
19 health and safety hazards, as described in detail herein. DEFENDANTS knew that Judy was an
20 elder and dependent adult who required assistance to meet these needs which she was unable to
21 provide for herself, yet failed to provide for those needs, even with knowledge of Judy's high risk
22 for injury, her dependence on DEFENDANTS, and their substantial certainty that Judy would be
23 injured if these needs were not provided for. DEFENDANTS' failure to provide Judy with the care
24 and services she required caused her physical pain and mental suffering during her dying process.

25 35. In their continuous misrepresentations, nondisclosure, and failures to provide
26 information to Judy about her treatment, DEFENDANTS repeatedly violated both state and federal
27 regulations enacted to protect patients in hospitals by:

- 1 a. Failing to provide information necessary for Judy to make an informed decision
- 2 about her care at UCSF, as required by 42 C.F.R. § 482.13(b)(2);
- 3 b. Failing to provide information necessary for Judy to participate actively in decisions
- 4 regarding her medical care and failing to give reasonable responses to her requests, to
- 5 as required by 22 C.C.R. § 70707;

6 The foregoing regulations define the duties of care owed to the patients of hospitals such as Judy to
7 make informed decisions about their care. DEFENDANTS' violations of these regulations
8 constitute a negligent failure of any person having the care and custody of an elder to exercise the
9 care that a similarly situated reasonable person would exercise. Further, DEFENDANTS lead
10 patients, including Judy, to believe that they comply with the above-referenced regulations when
11 they construe and apply these regulations in their own "Patients Rights & Responsibilities" by
12 stating that patients have the right to receive, "effective communication and to participate in the
13 development and implementation of your plan of care and to receive information about the
14 continuity of your care." DEFENDANTS' repeated violations of these regulations and policies by
15 repeatedly and knowingly withholding from Judy the information she needed to make informed
16 consent to continue in DEFENDANTS' care and custody, led her to believe over and over that
17 DEFENDANTS would honor her request for aid in dying. This was a pattern and was reckless.

18 36. The above-mentioned acts of DEFENDANTS, and each of them, constituted
19 "abuse," "neglect" and/or "abandonment" within the meaning of Welfare & Inst. Code §15610 et
20 seq. and caused physical pain and/or mental suffering and/or deprived Judy of the services that were
21 necessary to protect her from physical pain and mental suffering during her dying process. Pursuant
22 to Welfare & Inst. Code §15610.57(a)(1), DEFENDANTS negligently failed to exercise that degree
23 of care that a reasonable person in a like position would exercise.

24 37. As discussed in detail above, as a direct legal result of the abuse, neglect and/or
25 abandonment of Judy by DEFENDANTS, and each of them, Judy suffered physical pain and mental
26 suffering during her dying process.

27 38. As a direct result of the abuse, neglect and/or abandonment of Judy by

1 DEFENDANTS, and each of them, Judy was caused to incur the expense of medical care and other
2 related expenses, all to her special damage in a sum to be established according to proof.

3 39. By the conduct, acts and omissions of DEFENDANTS, as alleged above, they are
4 guilty of recklessness, oppression, fraud, and/or malice. The specific facts set forth above show a
5 disregard of the high probability that Judy would be injured. In addition to special damages,
6 Plaintiffs are therefore entitled to an award against DEFENDANTS, and each of them, of the
7 reasonable attorney's fees and costs incurred in prosecuting this case pursuant to Welfare &
8 Institutions Code §15657, as well as decedent Judy's pre-death pain and suffering. As a direct result
9 of the abuse, neglect and/or abandonment of Judy by DEFENDANTS, and each of them, Judy
10 suffered fear, anxiety, humiliation, physical pain and discomfort, and emotional distress, all to her
11 general damage in a sum to be established according to proof.

12 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

13 **SECOND CAUSE OF ACTION**

14 **(Misrepresentation/Fraud)**

15 40. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs
16 into this cause of action as though fully set forth herein.

17 41. DEFENDANTS misrepresented to decedent Judy that her wishes for aid in dying
18 would be honored and DEFENDANTS concealed, failed to timely disclose, and/or suppressed the
19 fact that they would not provide aid in dying. Decedent Judy's reliance on DEFENDANTS'
20 representation was a substantial factor in causing her harm.

21 42. As a direct and proximate result of the above-described conduct of DEFENDANTS,
22 and each of them, decedent Judy was compelled to and did employ the services of physicians,
23 nurses and other health care providers, for medical treatment and care, and did incur medical
24 expenses in a sum not yet ascertained, prior to her death.

25 43. As a further result of the above-described conduct of DEFENDANTS, and each of
26 them, decedent Judy suffered grievous pain and mental suffering prior to her death.

27 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

1 **THIRD CAUSE OF ACTION**

2 **(Negligent Infliction of Emotional Distress)**

3 44. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs
4 into this cause of action as though fully set forth herein.

5 45. Plaintiffs CATHERINE DALE-JABLONOWSKI and MARNIE FREUND
6 BEAMESDERFER are the daughters of decedent Judy. At all times relevant, CATHERINE DALE-
7 JABLONOWSKI and MARNIE FREUND BEAMESDERFER witnessed DEFENDANTS' acts, as
8 set forth above, and believed DEFENDANTS would provide Judy with aid in dying, as she
9 requested and was told she would receive by DEFENDANTS, but to no avail. CATHERINE
10 DALE-JABLONOWSKI and MARNIE FREUND BEAMESDERFER contemporaneously
11 witnessed DEFENDANTS' negligence and knew Judy was being injured at that time due to
12 DEFENDANTS' negligence. At the time that CATHERINE DALE-JABLONOWSKI and
13 MARNIE FREUND BEAMESDERFER witnessed the above-referenced injury-producing events,
14 they were contemporaneously aware that DEFENDANTS' conduct was causing injury to Judy, who
15 would, and did, suffer a horrible and painful dying process precisely how she had sought to avoid
16 through aid in dying. That is, CATHERINE DALE-JABLONOWSKI and MARNIE FREUND
17 BEAMESDERFER were aware of and observed conduct by DEFENDANTS which produced injury
18 to Judy. CATHERINE DALE-JABLONOWSKI and MARNIE FREUND BEAMESDERFER were
19 aware of the fact that Judy was in an immediate need of DEFENDANTS' assistance and care. To
20 Plaintiffs' knowledge, DEFENDANTS failed to provide necessary care. CATHERINE DALE-
21 JABLONOWSKI and MARNIE FREUND BEAMESDERFER were able to perceive and suffer
22 shock from the connection between DEFENDANTS' conduct and Judy's resulting injury.

23 46. As a result of the above-mentioned, Plaintiffs experienced extreme emotional distress
24 and were so injured.

25 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.
26
27

1 **FOURTH CAUSE OF ACTION**

2 **(Negligence)**

3 47. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs
4 into this cause of action as though fully set forth herein.

5 48. At all times herein mentioned, DEFENDANTS, and each of them, had a duty to use
6 reasonable care, and breached that duty and did negligently and carelessly care for Judy as discussed
7 in detail above.

8 49. As a direct legal result of the negligence and carelessness of DEFENDANTS, and
9 each of them, as stated above, Judy suffered physical pain and mental suffering during her dying
10 process as described herein.

11 50. As a further direct legal result of the negligence of the DEFENDANTS, and each of
12 them, as stated above, the Estate of Judith Dale and/or Plaintiffs were monetarily damaged and
13 caused to incur the expense of medical expenses, all to their special damage in a sum to be
14 established according to proof.

15 51. As a further direct legal result of the negligence of DEFENDANTS as stated above,
16 and each of them, Judy suffered fear, anxiety, humiliation, physical pain and discomfort, and
17 emotional distress, all to her general damage in excess of the minimum jurisdiction of the Court, to
18 be established according to proof.

19 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

20 **FIFTH CAUSE OF ACTION**

21 **(Survivorship)**

22 52. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs
23 into this cause of action as though fully set forth herein.

24 53. At all times herein mentioned, Plaintiffs CATHERINE DALE-JABLONOWSKI and
25 MARNIE FREUND BEAMESDORFER are Successors-in-Interest to the Estate of Judith Dale,
26 deceased, pursuant to Code of Civil Procedure §§377.20 and 377.30. Plaintiffs CATHERINE
27 DALE-JABLONOWSKI and MARNIE FREUND BEAMESDORFER constitute heirs at law to

1 Judy's Estate.

2 54. As a direct and proximate result of the above-described conduct of DEFENDANTS,
3 and each of them, decedent Judy was compelled to and did employ the services of physicians,
4 nurses and other health care providers, for medical treatment and care, and did incur medical
5 expenses in a sum not yet ascertained, prior to her death. Plaintiffs CATHERINE DALE-
6 JABLONOWSKI and MARNIE FREUND BEAMESDORFER, as Successors-in-Interest to the
7 Estate of Judy, deceased, seek to recover such losses or damages as decedent Judy incurred prior to
8 her death.

9 55. As a further result of the above-described conduct of DEFENDANTS, and each of
10 them, decedent Judy suffered pain and mental suffering prior to her death.

11 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

12 **REQUEST FOR JURY TRIAL**

13 Plaintiffs hereby request a jury trial.

14 **PRAYER**

15 WHEREFORE, Plaintiffs pray for judgment against the DEFENDANTS, and each of them,
16 as follows:

- 17 1. For general damages according to law and proof;
- 18 2. For special damage according to law and proof;
- 19 3. For costs of suit;
- 20 4. For attorney's fees pursuant to law;
- 21 5. For punitive damages;
- 22 6. For pre-judgment interest according to law; and
- 23 7. For such other and further relief as the Court may deem proper.

24 Dated: July 7, 2017

25 STEBNER AND ASSOCIATES

26 By:

27 Kathryn Stebner
Deena Zacharin
Attorneys for Plaintiffs