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March 11, 2022

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FOR IMMEDIATE RELEASE

Approved by: JAK
Press Release #22-16

BAKERSFIELD: District Attorney Cynthia Zimmer announced today, March 11, 2022, that her office, alongside a coalition of District and City Attorneys and Attorney General Rob Bonta, reached a \$3.25 million settlement with Tennessee-based Brookdale Senior Living, Inc. (Brookdale), operator of the “Brookdale Riverwalk” skilled nursing facility and the nation’s largest senior living operator. The settlement, led by District Attorney Zimmer, resolves allegations that Brookdale’s ten California skilled nursing facilities failed to adequately notify and prepare residents for both transfers and discharges and misrepresented its quality of care to the public by reporting false information, including over-reporting the number of hours that nurses provided care to residents, to the Centers for Medicare & Medicaid (CMS). Today’s settlement is a stipulated judgment that resolves the People’s lawsuit against Brookdale.

As part of the settlement, Brookdale will be required to:

- Stop engaging in the illegal practices alleged in the complaint.
- Appoint a monitor to oversee compliance at Brookdale Riverwalk; and
- Pay \$2.4 million in civil penalties, \$550,000 in costs, and \$300,000 to the Kern County Long Term Care Ombudsman.

“Residents of skilled nursing facilities are among the most vulnerable members of our community,” said District Attorney Zimmer. “This judgment will make our vulnerable seniors safer by bringing a monitor into Brookdale’s facilities, providing more funding for Kern County’s long-term care ombudsman program, and sending a message to other skilled nursing facility operators — if you put profits ahead of the safety of your vulnerable residents, you will be held accountable.”

The settlement resolves allegations that Brookdale failed to properly notify its residents and families of transfers and discharges. Skilled nursing facilities are required to give notice of transfer or discharge at least 30 days in advance, or as soon as practicable. Brookdale failed to timely provide this required notice to its residents, with a copy to the local ombudsmen. Brookdale also failed to properly prepare its residents for transfer or discharge. As a result of these actions, Brookdale endangered the health of its residents and left families scrambling to find other places to care for their loved ones.

The settlement also resolves allegations that Brookdale misrepresented the quality of its care to the public by reporting false information to CMS. As a means of helping the public to choose a skilled nursing facility, CMS rates facilities on several quality measures on a scale of one to five stars, which are then posted to the CMS website for members of the public to view. Specifically, Brookdale over-reported its nursing staffing hours to CMS, and by doing so, was awarded undeserved four-and five-star ratings. By partaking in these unfair business practices, Brookdale violated both the Unfair Competition Law and False Advertising Law.

In today's announcement, District Attorney Zimmer is joined by Attorney General Bonta and the District Attorneys of Alameda, San Diego, and Santa Cruz Counties, as well as the Los Angeles City Attorney.

A copy of the stipulated judgment is attached.

The original complaint can be found online at: <https://oag.ca.gov/news/press-releases/attorney-general-becerra-sues-nursing-home-chain-misrepresenting-its-quality>

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FILED
KERN COUNTY
MAR 11 2022

BY _____ DEPUTY

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15 Attorneys for Plaintiff
16 The People of the State of California

*EXEMPT FROM FILING FEES
PER GOV. CODE § 6103*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF KERN - METROPOLITAN DIVISION**

19 * * * * *

20
21 THE PEOPLE OF THE STATE OF
CALIFORNIA,
22
23 Plaintiff,
24 vs.
25 BROOKDALE SENIOR LIVING, INC., a
26 Delaware corporation,
27 Defendant.

Case No. BCV-21-100539 TSC

**[PROPOSED] FINAL JUDGMENT
AND INJUNCTION**

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1 Plaintiff, the People of the State of California, through its attorneys, Rob Bonta, Attorney
2 General of the State of California, by Supervising Deputy Attorney General Michele Van Gelderen and
3 Deputy Attorneys General Bryan Kao and Kevin Reyes; Cynthia Zimmer, District Attorney for the
4 County of Kern, by Deputy District Attorney John Ohanesian; Summer Stephan, District Attorney for
5 the County of San Diego, by Head Deputy District Attorney Thomas Papageorge and Deputy District
6 Attorney Colleen E. Huschke; Jeffrey S. Rosell, District Attorney for the County of Santa Cruz, by
7 Assistant District Attorney Douglas Allen; Mike Feuer, City Attorney of the City of Los Angeles, by
8 Christina Tusan, Supervising Deputy City Attorney; Nancy O'Malley, District Attorney of Alameda
9 County, by Deputy District Attorney Lori Schnall (the "People" or "Plaintiff"), and Defendant
10 Brookdale Senior Living, Inc., a Delaware corporation, appearing through its attorneys, Hooper, Lundy
11 & Bookman, P.C., by Scott Kiepen, Katrina Pagonis, and Matthew I. Lahana ("Brookdale" or
12 "Defendant"), have stipulated that this Final Judgment and Injunction ("Judgment") may be entered as
13 a compromise of disputed claims and defenses, without trial or adjudication of any issue of fact or law,
14 and without Defendant admitting any liability or wrongdoing, and with Plaintiff and Defendant
15 (collectively, the "Parties") having waived their right to appeal any issue of fact or law arising from the
16 allegations addressed by this Judgment. The Court having considered the matter and the attached
17 Stipulation, and good cause appearing:

18 IT IS HEREBY ORDERED, ADJUDGED, and DECREED AS FOLLOWS:

19 1. This Court has jurisdiction over the subject matter of the People's complaint filed in this
20 action and the Parties; this is a proper venue for this action; and the Court has jurisdiction to enter this
21 Judgment.

22 2. This Judgment is applicable to Defendant and to each of its subsidiaries and agents
23 (other than natural persons); successors and assigns; and any corporation, limited liability company,
24 partnership, or any other legal entity or organization which is controlled, owned, managed, licensed,
25 operated, or administered by Defendant, which is acting on behalf of Defendant, and which, directly or
26 indirectly, controls, manages and/or owns any skilled nursing facility in California.

27 3. This Judgment does not apply to other types of facilities that are not skilled nursing
28 facilities in California, including but not limited to, independent living communities, assisted living

1 communities, and residential care facilities for the elderly located in California or elsewhere that
2 Defendant owns, manages, and/or controls.

3 **INJUNCTION**

4 4. Under Business and Professions Code sections 17203 and 17535, Defendant is hereby
5 enjoined from the following:

6 A. Discharging or transferring a resident without providing to the resident and the
7 resident's representative (as defined by 42 C.F.R. section 483.5, Health and Safety Code section
8 1599.3 or 22 C.C.R. 72527[d]) the preparation and orientation required by law, including 42
9 U.S.C. section 1396r(c)(2), and 42 C.F.R. section 483.15(c)(7);

10 B. Discharging or transferring a resident without developing and implementing a
11 transfer or discharge plan as required by law, including 42 C.F.R. section 483.15(c) and 42
12 C.F.R. section 483.21(c);

13 C. Failing to document the discharge or transfer and maintain the documentation,
14 including the discharge summary, in the resident's medical record, as required by in 42 C.F.R.
15 section 483.15(c)(2) and section 483.21(c);

16 D. Failing to have documentation made and placed in the resident's medical record
17 by the resident's attending physician when transfer or discharge is allowed under 22 C.C.R.
18 section 72527(a)(6) and 42 C.F.R. section 483.15(c)(1), or by another physician when transfer or
19 discharge is allowed under 22 C.C.R. section 72527(a)(6) and 42 C.F.R. section 483.15(c)(1), as
20 required by 42 C.F.R. section 483.15(c)(2);

21 E. Discharging or transferring a resident unless: (1) the transfer or discharge is
22 necessary to meet the resident's welfare and the resident's needs cannot be met in the facility;
23 (2) the transfer or discharge is appropriate because the resident's health has improved
24 sufficiently so the resident no longer needs the services provided by the facility; (3) the safety of
25 individuals in the facility is endangered due to the resident's clinical or behavioral status; (4) the
26 health of the individuals in the facility would otherwise be endangered; (5) the resident has
27 failed, after reasonable and appropriate notice, to pay for his or her stay; or (6) the facility
28 ceases to operate, as required by 42 U.S.C. section 1396r(c)(2), 42 C.F.R. section 483.15(c)(1),

1 and 22 C.C.R. section 72527(a)(6).

2 F. Discharging or transferring a resident without giving the resident and the
3 resident's representative timely prior written notice in a language and manner they understand in
4 violation of 42 U.S.C. section 1396r(c)(2), 42 C.F.R. section 483.15(c)(3)-(4), and 22 C.C.R.
5 section 72527(a)(6);

6 G. Discharging or transferring a resident without sending a copy of the written
7 notice of transfer or discharge to the local Long-Term Care Ombudsman within the time
8 required by Health and Safety Code section 1439.6 and 42 C.F.R. section 483.15(c)(3);

9 a. Except as specified in 42 C.F.R. 483.15(c)(4), for all transfers or
10 discharges, Defendant must provide the resident and the resident's representative a
11 written notice of transfer or discharge in a form in compliance with 42 C.F.R.
12 483.15(c)(5) at least 30 days before the resident is transferred or discharged, with a
13 contemporaneous copy of the notice to the local Long-Term Care Ombudsman as
14 required by Cal. Health and Safety Code section 1439.6 and 42 C.F.R. section
15 483.15(c)(3)-(4);

16 b. A copy of the notice of transfer or discharge must be provided to the
17 Quality Compliance Specialist as set forth below by email, facsimile transmission or any
18 other means as directed by the Quality Compliance Specialist, at the same time as the
19 notice is provided to the Ombudsman.

20 H. Making, or causing to be made, false or misleading statements to the Centers for
21 Medicare & Medicaid Services ("CMS") concerning such skilled nursing facility(ies),
22 including, but not limited to, providing, or causing to be provided, false or misleading
23 information that is used for the formulation or calculation of CMS's Five-Star Quality Ratings.

24 **COMPLIANCE**

25 5. By agreement of the Parties, the Office of the District Attorney for the County of Santa
26 Cruz ("Santa Cruz District Attorney") and Defendant mutually select Professor Christopher Cherney of
27 Skilled Review Consulting LLC to act as Quality Compliance Specialist ("Specialist") to oversee
28 compliance with the injunctive provisions of this Judgment that apply to Defendant's California skilled

1 nursing facility(ies). The Specialist's assignment is limited to the scope of this Injunction, but he may
2 suggest recommendations outside of the scope of this Injunction to the Santa Cruz District Attorney and
3 Brookdale that may, in his opinion, improve the quality of care. If the Specialist exceeds his authority
4 or fails to faithfully carry out his duties, either party may apply to the Court to seek dismissal and/or
5 replacement of the Specialist. Except as set forth in this Judgment or when acting as a witness on
6 behalf of the People, the Specialist is strictly prohibited from using any information he obtains during
7 the course of his assignment against Defendant or any of its affiliates or subsidiaries in any future third-
8 party assignment he may receive or obtain as an expert witness or otherwise. Except as provided herein
9 or as required by law, the Specialist shall keep his findings and conclusions confidential and may not
10 disclose them to any third-party.

11 6. The cost of the Specialist shall be borne by Defendant, which shall pay the Specialist's
12 invoice within forty-five days of presentment by the Specialist. If there is a dispute concerning the
13 Specialist's invoice, Defendant shall pay the undisputed sum to the Specialist and shall deposit the
14 disputed sum with the Santa Cruz District Attorney. Defendant and the Specialist, in consultation with
15 the Santa Cruz District Attorney, shall meet and confer in good faith in an attempt to resolve the
16 dispute. If the dispute is not resolved, it may be presented to this Court upon ex parte application or
17 noticed motion for resolution. The Specialist's rate shall not exceed his customary rate and shall be
18 consistent with the rate charged by other professionals with similar experience performing such
19 oversight services.

20 7. The Specialist's rights and obligations shall continue for eighteen (18) months from the
21 entry of Judgment. If the Specialist resigns or is removed for any reason, Defendant shall meet and
22 confer with the People on the Santa Cruz District Attorney's retention of a replacement Specialist
23 within fourteen (14) days of the Specialist's resignation or removal. If Defendant objects to the
24 People's proposed Specialist, Defendant must present its objection to this Court by ex parte application
25 or noticed motion to be heard by the Court within 30 days of the People's identification of the
26 replacement Specialist, or as soon thereafter as the Court may hear the matter. The 18-month oversight
27 period shall be tolled and extended pending the Court's resolution of the objection and until a
28 replacement Specialist is retained and able to begin carrying out his or her duties pursuant to this

1 Judgment. Six months after entry of Judgment and every six months thereafter for the oversight period,
2 the Specialist shall issue a written report to the Parties that reviews and analyzes Defendant's
3 compliance. The reports shall detail the Specialist's findings and recommendations for corrective
4 action, if any is required. The Specialist shall provide additional written or oral updates at the request
5 of the People.

6 8. The Specialist shall have reasonable access to all records of such skilled nursing
7 facility(ies) to perform his duties, access to such skilled nursing facility(ies) to perform his duties, and
8 access to residents and residents' representatives to perform his duties. Defendant shall cooperate with
9 the Specialist in order to allow the Specialist to carry out his or her duties pursuant to this Judgment.
10 To the extent electronic records are available for such skilled nursing facility(ies), Defendant shall give
11 the Specialist access credentials to allow the Specialist remote access to only those records that apply to
12 this Judgment during the oversight period. The Specialist shall maintain confidentiality of records
13 covered by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA),
14 California medical privacy laws, and third-party privacy rights, such as employee records and non-
15 public financial records, disclosing them only to Specialist's staff, facility staff, counsel for both parties
16 and their employees, agents and experts, who shall also maintain such confidentiality. The Specialist
17 shall enter into and comply with a HIPAA-compliant Business Associate Agreement with Defendant.

18 **MONETARY RELIEF**

19 9. Upon entry of this Judgment, Defendant shall pay:

- 20 a. Pursuant to Business and Professions Code sections 17206, 17206.1 and 17536, a
21 penalty of \$2,400,000, which funds shall be divided equally between the
22 agencies representing the People. Payment shall be made by cashier's check,
23 wire transfer or other certified funds payable to Kern County District Attorney's
24 Office, care of Deputy District Attorney John Ohanesian.
- 25 b. Pursuant to California Business & Professions Code sections 17203 and 17535,
26 the sum of \$300,000 to "Greater Bakersfield Legal Assistance, Inc." for the
27 benefit of the Kern County Long Term Care Ombudsman Program.
- 28

1 c. The sum of \$550,000 as reimbursement for costs, to be distributed at the
2 People's discretion. Payment shall be made by cashier's check, wire transfer or
3 other certified funds payable to Kern County District Attorney's Office, care of
4 Deputy District Attorney John Ohanesian.

5 **OTHER TERMS**


6 10. Nothing in the Judgment alters the requirements of federal or state law to the extent they
7 offer greater protections to patients/residents.

8 11. Defendant shall cooperate with the People in any inquiry concerning compliance with
9 this Judgment.

10 12. This Judgment does not apply to, resolve, estop, adjudicate, preclude or bar any claims
11 for civil, criminal, or administrative liability that any person or entity, including Defendant, has or may
12 have to the State's Medicaid Program (Cal. Welfare & Inst. Code §§ 14000, et seq., 14200 et seq.; 42
13 U.S.C. Chapter 7 Subchapter XIX), including any such liability to the State's Medicaid Program arising
14 from "managed care entities" as defined by 42 U.S.C. § 1396u-2(a)(1)(B).

15 13. This Court retains jurisdiction over this Judgment and the Parties hereto for the purpose
16 of enabling the Parties to apply to the Court for such orders or directions as may be necessary or
17 appropriate for the construction or modification of the injunctive provisions of this Judgment, and for
18 the enforcement of this Judgment, and for any other purpose authorized by law.

19
20 Dated: 3-11-22

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22 _____
23 The Honorable Thomas S. Clark
24 JUDGE OF THE SUPERIOR COURT
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