STATE OF MARYLAND, *Plaintiff,* v. KRIS-LEIGH CATERED LIVING AT SEVERNA PARK LLC t/a KRIS-LEIGH ASSISTED LIVING c/o Richard Ainsworth 19 Bondi Way Reisterstown, Maryland 21136, RICHARD AINSWORTH 19 Bondi Way Reisterstown, Maryland 21136, and HELEN JAMES AINSWORTH 19 Bondi Way Reisterstown, Maryland 21136, *Defendants*.	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO. _____

FILED
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CIRCUIT COURT
BALTIMORE COUNTY

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COMPLAINT

1. The State of Maryland, by Attorney General Brian E. Frosh, brings this False Health Claims Act action against Kris-Leigh Catered Living at Severna Park LLC and its owners, Richard Ainsworth and Helen James Ainsworth (collectively "Kris-Leigh"), to recover monetary damages that Kris-Leigh caused the Maryland Medicaid program ("Medicaid") to pay for services that were not provided or were so substandard as to render them fundamentally worthless.

2. From at least January 1, 2013 to the present (the "Relevant Period"), Medicaid paid Kris-Leigh over $1.1 million to provide assisted living program services to qualifying Medicaid residents who require the highest levels of care, such as adults who are elderly, vulnerable, and who suffer from dementia, cognitive decline or a debilitating physical condition. Most, if not all,

Kris-Leigh residents require a high degree of assistance with their daily activities, such as eating, grooming, bathing, oral hygiene, walking or getting around, dressing and toileting (often referred to as activities of daily living). Importantly, Kris-Leigh must also manage and administer medications to its residents, who require such medication to survive.

3. Throughout the Relevant Period, however, Defendants engaged in a scheme to maximize profits at the expense of the physical, mental, and psychosocial well-being of elderly vulnerable residents by making materially false representations to the Medicaid program about the level and quality of the assisted living program services rendered to their residents. Defendants accomplished this by systematically not rendering certain services to Kris-Leigh residents that were billed to the Medicaid program. The services that were provided were fundamentally worthless services as evidenced by Defendants' refusal to adequately staff the facility, refusal to hire and train qualified staff, refusal to follow medication plans for residents, and refusal to authorize necessary expenditures for upkeep and maintenance. Bed bugs are allowed to infest the facility and black mold endangers residents and staff alike because Defendants have refused to pay to properly remediate the problems. Defendants frequently overrode or ignored the recommendations of the professionals they hired and unnecessarily delayed implementation of many beneficial services to their residents. In short, Defendants knowingly submitted false claims for services they did not provide and otherwise failed to provide adequate care for their vulnerable residents or to provide a safe environment for them.

4. Kris-Leigh received numerous complaints during the Relevant Period from both inside and outside the facility about its inadequate staffing, lack of supervision, and the unsafe conditions that permeate the facility. The Maryland Office of Health Care Quality ("OHCQ") conducted at least eight unannounced inspections at Kris-Leigh during the Relevant Period, each of which resulted in numerous and significant citations for failing to comply with state law.

Notwithstanding these OHCQ citations, and despite misrepresenting to OHCQ that they have implemented plans to correct such practices, Defendants have continued their deficient practices.

5. Defendants have largely ignored complaints from staff and residents and have ignored citations from OHCQ. In some instances, Defendants have chastised or punished employees who have complained.

6. Several residents experienced adverse medical consequences due to Defendants' abysmal failure to care for them. Medications were not dispensed, heart attacks went undiagnosed, pleas for help went unheeded, residents went hungry, and unsafe conditions were allowed to manifest. In one tragic incident, a resident suffering from dementia was allowed to wander out of the facility and onto the highway, where she was struck by an automobile and killed.

7. Yet, Defendants knowingly submitted thousands of claims to the Medicaid program for services they failed to provide and which were otherwise so substandard as to render the services fundamentally worthless.

8. Defendants misled the Medicaid program by falsely certifying that each of these claims submitted was for services that were medically necessary, actually provided, and in full compliance with all state and federal regulations as to the requisite standard of care owed to the residents in their charge.

9. Because Kris-Leigh knowingly submitted false claims to the Medicaid program for services that were not provided or were fundamentally worthless, the State of Maryland brings this action to recover treble damages and civil penalties under the Maryland False Health Claims Act, §§ 2-601 to 2-611 of the Health-General Article, and to recover damages and other monetary relief under the equitable theory of unjust enrichment.

PARTIES

10. The State of Maryland is a free, sovereign, and independent state. Maryland law

authorizes the Attorney General to file a civil action against a person who violates Maryland's False Health Claims Act. Md. Code Ann., Health-Gen. § 2-603.

11. Kris-Leigh is a limited liability company organized under the laws of Maryland and located at 831 Ritchie Highway, Severna Park, Maryland 21146-4166. At all relevant times, Kris-Leigh was licensed to operate a 62 bed facility to conduct an "Assisted Living Program," as that term is defined under Maryland law.

12. Defendants Helen James Ainsworth and Richard Ainsworth each own 50 percent of Kris-Leigh, which they personally control, manage, and operate.

JURISDICTION AND VENUE

13. Section 6-102 of the Courts and Judicial Proceedings Article authorizes this Court to exercise personal jurisdiction over the Defendants, each of whom is domiciled in Maryland or maintains a principal place of business in Maryland.

14. Venue is proper in this Court under § 6-201(b) of the Courts and Judicial Proceedings Article, because both owners reside in Baltimore County, from which residence they made decisions about the control, management, and operation of the facility in furtherance of Defendants' fraudulent scheme, and OHCQ is headquartered here.

THE MARYLAND FALSE HEALTH CLAIMS ACT

15. The False Health Claims Act provides, in pertinent part, that a person may not:

> (1) Knowingly present or cause to be presented a false or fraudulent claim for payment or approval; [or]
>
> (2) Knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim. . . .

Md. Code Ann., Health-Gen. § 2-602(a).

16. The Act further provides that:

> (1) "Knowing" or "knowingly" means, with respect to information and without

requiring proof of specific intent to defraud, that a person:

(i) Has actual knowledge of the information;

(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information.

Md. Code Ann., Health-Gen. § 2-601(f).

17. Pursuant to the Act, a person "who is found to have violated [the Act] is liable to the State for . . . [a] civil penalty of not more than $10,000 for each violation . . . and [a]n additional amount of not more than three times the amount of damages the State sustains as a result of the acts of that person." Md. Code Ann., Health-Gen. § 2-602(b).

FACTS

I. The Medicaid Program

18. Congress established the Medicaid program in 1965 to provide health insurance for people with limited resources and to people with disabilities. Title XIX of the Social Security Act of 1965, 42 U.S.C. §§ 1396 – 11396w-5, established the Grants to States for Medical Assistance Programs, popularly known as Medicaid. Medicaid is a federal and state-funded health insurance program administered by the various states. The State of Maryland administers its Medicaid program through its Department of Health and Mental Hygiene (the "Department"). *See* Md. Code Ann., Health-Gen. § 15-103.

19. To participate in the Medicaid program, Maryland law requires providers that operate an Assisted Living Program, such as Kris-Leigh, to enter into and have in effect a Provider Agreement with the Department pursuant to which the provider agrees: "[to] comply with all standards of practice, professional standards and levels of Service as set forth in all applicable federal and state laws, statutes, rules and regulations;" "to accept responsibility for the validity and accuracy of all claims submitted to [the Department]," and "[t]hat all claims submitted under his,

her or its provider number shall be medically necessary Services that were actually provided as described therein." COMAR 10.09.36.03(A)(6).

20. An "Assisted Living Program" is defined by COMAR as a "facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to meet the needs of individuals who are unable to perform, or who need assistance in performing, the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence for the individuals." COMAR 10.07.14.02(11)(a).

21. Kris-Leigh had a Provider Agreement with the Department in effect throughout the Relevant Period to operate an Assisted Living Program.

22. The specific conditions that the Department imposes on an Assisted Living Program for reimbursement under Medicaid are outlined in Title 10 of COMAR. These conditions include the following requirements:

(a) There shall be a staffing plan that serves the needs of each resident, which "shall include on-site staff sufficient in number and qualifications to meet the 24-hour scheduled and unscheduled needs of the residents." COMAR 10.07.14.14.

(b) A delegating nurse must be on-site to observe each resident at least every 45 days, be available on call, and have the overall responsibility for managing the clinical oversight of resident care, issuing nursing or clinical orders, based upon the needs of residents, reviewing the assisted living manager's assessment of residents, and appropriately delegating nursing tasks. *See* COMAR 10.07.14.20.

(c) Each resident must receive a full assessment within 48 hours of a significant change in condition and each non-routine hospitalization of each resident. Each assessment must be reviewed every six months for residents who do not have a change in condition. *See* COMAR

10.07.14.26.

(d) Each resident must have a service plan to address the services to be provided based on the assessment of the resident, when and how often the services are to be provided, and how and by whom the services are to be provided. Each resident's service plan must be based on assessments of the resident's health, function, and psychosocial status using the Resident Assessment Tool. *Id.*

(e) Staff must review and update, if necessary, the service plan at least every six months, unless a resident's condition or preferences significantly change sooner, in which case the assisted living manager or designee shall review and update the service plan promptly to respond to these changes. *Id.*

(f) Certified professionals must administer the medications consistent with a physician's medical orders, and the delegating nurse must review on-site the medication administration by unlicensed staff. *See* COMAR 10.07.14.29.

(g) The residents must "[b]e treated with consideration, respect, and full recognition of the resident's human dignity and individuality" and "[r]eceive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State, local, and federal laws and regulations. " COMAR 10.07.14.35.

(h) The facility operating the Assisted Living Program must be kept in good repair, be clean, free of any "condition that may create a health hazard, accident, or fire" and "[f]ree of insects." *See* COMAR 10.07.14.41.

23. Kris-Leigh's deliberate widespread failure to provide proper and appropriate care for its residents during the Relevant Period regarding assessments, service plans, medication management and administration, and resident health and welfare affected every claim submitted for reimbursement to Maryland's Medicaid program.

24. Accordingly, the services billed by Defendants during the Relevant Period were worthless and not entitled to reimbursement under Medicaid.

II. Defendants Failed to Comply with State Law in the Operation of an Assisted Living Program.

A. Defendants failed to provide adequate care and to satisfy material conditions for reimbursement regarding the residents' living conditions.

25. As noted above in Paragraph 22(g), to qualify as an Assisted Living Program, residents must be treated with dignity and "[r]eceive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State, local, and federal laws and regulations." COMAR 10.07.14.35. As noted above in Paragraph 22(h), the facility operating the Assisted Living Program must be kept in good repair and be clean, free of any "condition that may create a health hazard, accident, or fire," and "[f]ree of insects." *See* COMAR 10.07.14.41.

26. Throughout the Relevant Period, however, the living conditions endured by the Kris-Leigh residents were contrary to state regulations and not entitled to reimbursement by the Medicaid program. For example, in the summer of 2016, the two air conditioning units at Kris-Leigh were inoperable, leaving vulnerable residents to endure high temperatures in the facility.

27. Kris-Leigh has had and, upon information and belief, continues to have a pervasive black mold problem. Black mold is present at Kris-Leigh in the basement ceilings, marketing office ceilings, bathroom ceiling in the pool area, kitchen ceiling in the food storage area, in Rooms 102, 103, and 107, in the air-conditioning vents, and in the packaged terminal air conditioning (PTAC) units. The maintenance supervisor attempted to obtain an estimate to remediate the black mold, but Defendant Richard Ainsworth refused to pay a contractor to properly estimate the cost of remediation so the mold was allowed to continue to grow.

28. Kris-Leigh has had and, upon information and belief, continues to have a massive

bed bug infestation. In early 2015, the bed bug problem began in, and then spread beyond, rooms 413 and 312. By February 2016, the infestation had become pervasive. The executive director, in response to a complaint, observed a steady stream of bed bugs crawling down a vulnerable resident's head and face. Defendant Richard Ainsworth refused the recommendation of a professional extermination company to treat the entire building for bed bugs. Instead, Mr. Ainsworth authorized the extermination company to do it one room at a time, here and there. That approach failed.

29. After a meeting with Kris-Leigh's management staff prompted by continued complaints from certified medication technicians and residents about the bed bug infestation, instead of paying for a proper extermination of the infestation, Mr. Ainsworth purchased a commercial heating system purportedly designed to kill bed bugs using extreme heat.

30. On or about September 13, 2016, Mr. Ainsworth ordered the maintenance supervisor to seal off the rear-room and to cover the room's smoke/heat detectors and ceiling mounted sprinkler systems with ice-filled coolers mounted on telescoping poles. Mr. Ainsworth also ordered the maintenance supervisor, who is not a licensed electrician, to purchase materials and construct a make shift adaptor to plug the heaters into the wall socket. The maintenance supervisor complied with Mr. Ainsworth's orders, and began the "extermination" process, which resulted in a raging fire that forced the evacuation and temporary relocation of all residents. The fire inspector concluded that the faulty make-shift adapter caused the fire.

31. OHCQ inspectors have repeatedly found during the Relevant Period that Kris-Leigh violated state and federal regulations regarding general physical plant requirements and security at Kris-Leigh, including the deficient practices that resulted in the September 2016 fire.

32. Between October 2014 and June 2015, OHCQ inspections revealed that Kris-Leigh continuously failed to provide lockable exterior doors and an effective automated device/system

to alert staff to individuals entering or leaving the building. Although Kris-Leigh has a Wanderguard bracelet system intended to monitor individual residents and alert the facility when residents attempt to exit, Assisted Living Manager Gustke confirmed that no residents at the facility were wearing a Wanderguard bracelet at the time of inspection. These deficiencies pose serious risk of harm, and even death, as demonstrated by the elopement of resident CK, who was struck by a car and killed in 2014.

33. Kris-Leigh's intentional and deliberate widespread failures regarding the safety, maintenance, and physical living conditions illustrates Defendants' failure to provide the services paid for by the Maryland Medicaid program.

B. Kris-Leigh did not have adequate staffing to care for residents.

34. Qualified and well-trained staff to care for vulnerable adults are core services required for Medicaid reimbursement. To this end, Assisted Living Programs must develop a staffing plan to fit the needs of the residents, including on-site staff sufficient in number and qualifications to meet the twenty-four hour scheduled and unscheduled needs of its residents, awake overnight staff based on its residents' assessments, and relevant training. *See* COMAR 10.07.14.14.

35. Assisted Living Programs must also hire sufficient numbers of other staff to ensure that they can meet all applicable laws and regulations, in a manner consistent with the philosophy of assisted living and in compliance with generally accepted standards of care for the specific conditions of the residents they serve. *See* COMAR 10.07.14.19.

36. Kris-Leigh's staffing was woefully deficient. Throughout the Relevant Period, Kris-Leigh was chronically understaffed and the staff that it did employ was over-worked, under-qualified, and untrained. This critical deficiency not only violated Maryland law, but caused harm to the residents.

37. Kris-Leigh's staffing deficiencies are well-documented. OHCQ inspectors have repeatedly cited Kris-Leigh for failing to provide required basic first aid training for staff members and failing to put employees through initial training on fire, life safety, infection control, and basic food safety. Other employees who actually received training were not documented as having received it. Critically, OHCQ even cited Kris-Leigh for failing to provide a certified medication technician with required basic training.

38. These deficiencies did not create merely a hypothetical harm to residents. OHCQ inspectors noted that a seventy-two year old female admitted to Kris-Leigh in June 2014 fell out of her wheel chair during a bus ride because staff failed to secure her lap belt. The resident required hospitalization.

39. Another Kris-Leigh resident died as a result of staffing shortcomings. An OHCQ inspector noted during the October 2014 inspection that Resident CK was not supervised when she exited through unsecured doors and eloped to her death. The caregiver left Resident CK in the television room with the housekeeper, who, not properly trained to care for residents diagnosed with dementia, fell asleep. That allowed resident CK to walk out of the facility onto the highway where she was struck by a car and killed. Despite prior knowledge of Resident CK's dementia and wandering behavior, Kris-Leigh neither supervised her nor utilized the Wanderguard bracelet system it had in place to alert staff when the resident wanders.

40. The unscheduled needs of residents also have been unmet. Resident Care Manager Chrissy Weineman told OHCQ inspectors in July 2015 that the overnight staffing schedule for Kris-Leigh only had three staff to care for 57 residents across four floors. As a result, on one occasion, Resident EM complained about the difficulty getting a certified medication technician to respond to calls for help during the night. Thinking he was having a heart attack, Resident EM attempted to contact a caregiver for help, but the caregiver, who was two floors above the resident's

room, did not respond. After delayed assistance, Resident EM was hospitalized on June 5, 2015 for chest pain, which the doctor diagnosed as myocardial infarction (heart attack).

41. Resident JC complained to OHCQ inspectors that Kris-Leigh did not have adequate staff between 11 p.m. and 7 a.m. One night in July 2015, around 11:30 p.m., Resident JC was in desperate need of medication for pain, so she buzzed for help several times without getting a response. Staff never did respond to her calls and JC did not receive the necessary medication. JC had a diagnosis of neuropathic pain for which a physician prescribed hydromorphone (a narcotic used to treat moderate to severe pain).

42. Former Kris-Leigh employees have revealed that Defendants failed to adequately staff Kris-Leigh, over-worked its employed staff, and refused to authorize expenditures to hire adequate staff and assistants, all of which caused harm to the residents. According to these former employees, Kris-Leigh had systemic problems with inadequate staffing, staff calling in sick, staff routinely arriving late for work, staff sleeping while on shift, staff leaving residents unattended, and supervisors failing to provide direction to caregivers and certified medication technicians.

43. For example, Resident K, an elderly resident, with both legs amputated, required a mechanical hoyer lift operated by staff to get him in and out of bed. But Resident K was so neglected by staff that he developed bed sores and complained he was being deprived of food.

44. In another example, the maintenance supervisor, not a trained staff member, responded to cries for help from the resident in Room 320 and found her on the floor. Ultimately, the Assisted Living Manager arrived on the scene and placed the resident in her bed, but failed to write an incident report, make any note of the fall, or inform the family.

45. Kris-Leigh's staffing problems were so critical that Defendants routinely recruited untrained housekeeping staff, and sometimes the maintenance personnel, to perform skilled caregiver and nursing duties, such as assisting residents out of bed. One Kris-Leigh employee

resigned because the work load was so great, similar to a nursing home, and nurse turnover was high because Defendants overworked and under-paid them.

46. Defendants ignored complaints about the staffing levels for the overnight shift and refused to approve requests from management to hire additional staff to meet the needs of residents.

47. Based on these and numerous other episodes, Kris-Leigh's failure to adequately staff the facility was knowing, chronic, widespread, and affected every claim submitted for reimbursement to Maryland's Medicaid program.

C. Kris-Leigh failed to conduct timely assessments of residents by qualified personnel.

48. As noted above in paragraphs 22(b) and (c), Maryland law requires Kris-Leigh to perform several assessments of residents, which ensure that the needs of the residents are being met, to qualify as an Assisted Living Program eligible for Medicaid reimbursement.

49. During the Relevant Period, however, Kris-Leigh routinely failed to conduct required assessments on a timely basis, including initial assessments, forty-five day assessments, assessments upon a return from hospitalization, and six-month assessments.

50. OHCQ inspectors also noted that Kris-Leigh failed to timely (*i.e.*, within 48 hours) assess residents upon admission to the facility. For example, Kris-Leigh admitted Resident FM on August 29, 2013, but a delegating nurse did not assess FM until September 11, 2013, 13 days later.

51. OHCQ inspectors noted in April 2014, July 2015, February 2016, and February 2017 that Kris-Leigh failed to ensure that a delegating nurse was on-site to observe each resident at least every 45 days or to ensure satisfactory performance of appropriately delegated nursing tasks. Kris-Leigh also failed to require a delegating nurse to timely perform the 45-day assessments of residents. The following table identifies examples of gaps of longer than 45 days

between assessments:

Resident	Gap	Assessment Date	Next Assessment Date
SL	181 days	January 30, 2015	July 30, 2015
CS	162 days	February 18, 2015	July 30, 2015
NL	150 days	February 28, 2015	July 28, 2015
MR	135 days	November 11, 2013	March 25, 2014
MH	129 days	April 05, 2013	August 12, 2013
ED1	110 days	October 30, 2013	February 17, 2014
MH	105 days	November 11, 2013	February 24, 2014
MH	104 days	April 15, 2015	July 28, 2015
WR	95 days	December 20, 2013	March 25, 2014
WR	93 days	September 18, 2013	December 20, 2013
ED1	77 days	March 29, 2013	June 14, 2013
MR	75 days	April 27, 2013	July 11, 2013
JC	71 days	May 20, 2015	July 30, 2015
ED	64 days	May 27, 2015	July 30, 2015
MH	64 days	July 15, 2014	September 7, 2014
EM	58 days	June 1, 2015	July 29, 2015
MH	50 days	September 7, 2014	November 6, 2014

52. Kris-Leigh also failed to comply with the requirement that a delegating nurse complete a full resident assessment using the Resident Assessment Tool within 48 hours of a resident's hospitalization. For example, at a February 24, 2016 inspection, OHCQ identified that resident KL had not had a timely assessment by a delegating nurse after a November 10, 2015 hospitalization for a urinary tract infection and acute colitis or after a December 13, 2015 hospitalization for a head injury related to a fall at the facility. Indeed, notwithstanding the two hospitalizations, KL had not been assessed for 128 days, since October 9, 2015. Kris-Leigh also failed to timely perform these post-hospitalization assessments on at least five other occasions: July 10, 2013 (MR), January 2, 2015 (MH), June 10, 2015 (EM), November 10-12, 2015 (KL), and December 13, 2015 (KL).

53. As late as February 2017, OHCQ inspectors found Kris-Leigh continued to flaunt Medicaid regulations with respect to clinical oversight of resident care, completion of

comprehensive assessments, and 45 day reviews for Residents KL, JZ, ED1, CW, RD, CH, and ED2.

54. Former employees of Kris-Leigh confirm that Kris-Leigh routinely failed to complete medical assessments of residents. A former employee at Kris-Leigh complained that Kris-Leigh did not perform 45 day assessments because the Defendants did not want to pay a delegating nurse for the time to do them. Regardless of Defendants' motive for not having assessments done timely, these omissions not only violated Maryland law and the terms of Kris-Leigh's Provider Agreement with the Department, but also jeopardized the health and welfare of Kris-Leigh residents.

D. Kris-Leigh did not complete service plans for residents.

55. As noted above in paragraph 22(e), Maryland law requires Kris-Leigh to complete individualized service plans to meet each resident's needs. Service plans are critical to "enhance[] the dignity, privacy, and independence of each resident. A service plan for each resident shall be developed in a manner that enhances the principles of dignity, privacy, resident choice, resident capabilities, individuality, and independence without compromising the health or reasonable safety of other residents." COMAR 10.07.14.26(a).

56. During the Relevant Period, however, Kris-Leigh did not timely complete service plans for residents, and in some instances neglected to complete service plans at all.

57. OHCQ inspections over nearly three years from April 2014 to February 2017 revealed that during the Relevant Period Kris-Leigh failed to ensure the service plans for each resident addressed all services to be provided based on the assessments for each resident, failed to ensure individualized service plans were created, and failed to meet each resident's medical and nursing needs.

58. In April 2014, Kris-Leigh failed to ensure that the service plans for residents WR,

MH, FM, ED, and MR addressed all services to be provided based on the assessments of each resident.

59. In July 2015, OHCQ inspectors noted that Kris-Leigh failed to ensure that there were individualized service plans for residents and, accordingly, service plans that were prepared failed to meet each resident's medical and nursing needs:

Resident	Service Plan Failed To Address Services Related To
EM	wound care, diabetes, and constipation
NL	diabetes, sleep apnea, high blood pressure, high cholesterol, gastroesophageal reflux disease, degenerative joint disease, allergies and chronic kidney disease
JC	neuropathic pain, restless leg syndrome, hypothyroidism, high boll cholesterol and a history of urinary tract infections
MH	neuropathic pain, high blood pressure, constipation, osteoporosis, hoarding behaviors and a history of MRSA cellulitis
ED	lower extremity edema, incontinence, allergies, gastroesophageal reflux disease and a history of urinary tract infections
SL	psoriasis, gastroesophageal reflux disease and a history of urinary tract infections
CS	adequately address services related to constipation and hemorrhoids
KL	dementia, anemia, allergies, gastroesophageal reflux disease, and macular degeneration; failed to document medication administration for these diagnoses.

60. Kris-Leigh did not require a delegating nurse to review and update the service plans every six months, as it was required to do to qualify for reimbursement by the Medicaid program. This omission also resulted in injury and medical and nursing needs not being met. For example, a delegating nurse failed to review or update Resident KL's service plan despite two non-routine hospitalizations and a pharmacy recommendation to include in the Medication Administration Record the resident's diagnosis and prescribed treatment. (A Medication Administration Record is the report that serves as a legal record of the drugs administered to a patient at a facility by a health care professional and is a part of a patient's permanent record on their medical chart.)

61. As late as February 2017, OHCQ inspectors found that Kris-Leigh's non-compliance with Medicaid regulations with respect to resident service plans continues.

E. Kris-Leigh consistently mismanaged the administration and management of residents' medication.

62. As noted above in paragraph 22(f), to qualify as an Assisted Living Program eligible for Medicaid reimbursement, Maryland law requires Kris-Leigh to administer medications for residents consistent with a Physician's Order, to have certified professionals administer medications, and to have a delegating nurse review on-site the medication administration by unlicensed staff. *See* COMAR 10.07.14.29.

63. Over the last three years, OHCQ inspectors repeatedly cited Kris-Leigh for failing to ensure: (1) that medications were administered consistent with current signed Physician's Medical Orders using professional standards of practice; (2) that certified medication technicians compared the Physician's Medical Order, the Medication Administration Record, and the Pharmacy's medication label on the container every time they administered a medication to the residents (the "three-way check") to make sure they had the right person, medication, dose, time, route, and documentation; and (3) that a delegating nurse conducted an on-site review of the delegated task of medication administration by unlicensed staff.

64. The OHCQ inspectors found during their April 2015 inspection, for example, that Kris-Leigh did not have on-site:

(a) A topical steroid used to treat the inflammation and itching caused by a number of skin conditions such as allergic reactions, eczema, and psoriasis; another topical steroid used to treat a variety of skin conditions such as eczema, dermatitis, allergies, and rash; an antibiotic used for treating and preventing infection in skin wounds; and a laxative used to relieve occasional constipation and also to relieve symptoms caused by heartburn, upset stomach, or indigestion (for Resident WR);

(b) A stimulant to relieve constipation and irregularity (for Resident FM); and

(c) A laxative used to treat constipation, irritable bowel syndrome,

hemorrhoids, and weight loss; an inhaler used to relax muscles in the airways and increase air flow in the lungs; and acetaminophen to treat many conditions such as headache, muscle aches, arthritis, backache, toothaches, colds, and fevers (for Resident ED).

65. Despite an order for Resident MH to be administered Novolog insulin according to a sliding scale for blood sugar readings of 100 or higher, the Medication Administration Record revealed 51 occasions during the period of February and March 2014 when Kris-Leigh did not document the amount of insulin administered despite a blood sugar reading that was either not documented or was 150 or greater.

66. In other examples, despite an April 2, 2014 Physician's Order to apply Cerave moisturizing cream (used to treat dry and irritated skin) twice daily to Resident WR, the Medication Administration Record documented neither that the cream was a current treatment nor that it had been applied. Similarly, despite a Physician's Order to apply Nystop powder (an antifungal antibiotic used to treat skin infections caused by yeast) twice daily to Resident MR, the Medication Administration Record documented neither that Nystop was a current treatment nor that it had been applied.

67. The OHCQ inspectors noted that in July 2015, Kris-Leigh failed to provide evidence that it was documenting the medications administered to residents. For example, the Medication Administration Records omitted documentation that:

(a) Resident ED1 was administered Vitamin D as ordered in May and June 2015 (Vitamin D treats weak bones, bone pain, and bone loss);

(b) Resident ED was administered Lasix as ordered four times in May 2015 (Lasix is a diuretic pill used to treat fluid retention in people who have congestive heart failure, liver disease, or a kidney disorder);

(c) Resident JC was administered Nizoral as ordered 14 times in July 2015

(Nysoral is a topical used to treat skin infections such as athlete's foot, jock itch, ringworm, and certain kinds of dandruff); and

(d) Resident MH was administered Combivent as ordered 14 times in July 2015 and ten times in May 2015 (Combivent is a spray used to treat chronic obstructive pulmonary disease).

68. Every time a certified medication technician administers a medication, the technician must perform the three-way check by comparing the signed Physician's Medical Order, the Medication Administration Record, and the Pharmacy's medication label on the container, to make sure the technician has the right person, medication, dose, time, route, and documentation with respect to each medication administered to each resident. In July 2015 and February 2016, OHCQ inspectors cited Kris-Leigh for failing to ensure that certified medication technicians completed the three-way check for each medication administered to residents. For example, a complete three-way check of the medications administered had not been completed for Resident KL for 92 days between October 25, 2015 and January 2016. Omissions such as this lead to medication administration error, risk of injury to the residents, and potential adverse medical consequences for the residents.

69. The delegating nurse at Kris-Leigh is legally obligated to conduct an on-site review of medications administered by unlicensed staff. OHCQ inspectors discovered in February 2016, however, that this oversight was not being performed. For example, Resident KL's charting from October 2015 to January 2016 reveals 199 medication documentation errors. The failure of the delegating nurse to oversee the administration of prescribed medications can result in harm to residents.

70. As late as February 2017, Kris-Leigh continued to disregard Medicaid regulations with respect to the administration of medications inasmuch as Kris-Leigh lacked proper

documentation of a reason for all ordered medications for Residents JL and ED1 and of all medications as received or not received for Residents KL, JZ, ED1, CW, RD, and CH.

III. Defendants Submitted False Claims For Services Not Rendered And Falsely Certified That They Were in Compliance with the Maryland Medicaid Program for Reimbursement.

71. During the Relevant Period, Kris-Leigh submitted a completed "Health Insurance Claim Form" to the Medicaid program for each claim for reimbursement. The Health Insurance Claim Form serves two important purposes: (1) it identifies necessary information, including the resident's name, date of service, code for the covered services, and applicable rate per day; and (2) it includes a "MEDICAID PAYMENTS (PROVIDER CERTIFICATION)," signed by the provider stating:

> This is to certify that the foregoing information is true, accurate and complete. I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact may be prosecuted under applicable Federal or State laws.

72. Kris-Leigh certified that every claim it submitted to the Medicaid program for reimbursement contained true, accurate, and complete information, including that it had provided the covered services described therein. These services are governed by requirements set forth in COMAR 10.07.14.00 regarding residents' rights, staffing, staff training and qualifications, medical assessments, delegating nurse assessments, service plans, medication management and administration, physical living conditions, and security. During the Relevant Period, OHCQ repeatedly cited Kris-Leigh for deficiencies in violation of the foregoing regulations.

73. The Medicaid program paid for the "services" purportedly provided at Kris-Leigh and, as a result of Defendants' pattern and practice of failing to provide care at the facility, the State paid Defendants for care that: (a) was not provided; (b) did not comply with applicable laws and regulations; (c) did not promote the maintenance and enhancement of the quality of life of the

residents at Kris-Leigh; (d) was of a quality that failed to meet professionally recognized standards of health care; and (e) was so deficient as to be worthless.

74. Defendants knowingly submitted thousands of claims to the Medicaid program for services they failed to provide, did not comply with applicable laws and regulations, did not promote the maintenance and enhancement of the quality of life of the residents at Kris-Leigh, were of a quality that failed to meet professionally recognized standards of health care, and were so deficient as to be worthless.

75. Defendants supported each of these reimbursement claims with a false certification that they were in compliance with all state and federal regulations.

76. Certification of compliance with federal and state requirements, including the above conditions for reimbursement of claims submitted, is material to the Medicaid program's decision to pay those claims.

77. Had the Medicaid program known the full extent of Kris-Leigh's failures of care and violations of state and federal regulations, including conditions for reimbursement of claims submitted, it would not have paid the claims submitted by Kris-Leigh.

78. During the Relevant Period, each time that Kris-Leigh submitted a claim to the Medicaid program for assisted living services, Kris-Leigh implicitly claimed that it provided services that it did not in fact provide or provided in such a substandard manner to render them worthless. The submission of these claims violated Maryland's False Health Claims Act. *See* Md. Code Ann., Health-Gen. § 2-602(a).

79. During the Relevant Period, each time that Kris-Leigh submitted a claim to the Medicaid program for reimbursement for Assisted Living Program services it operated, it impliedly certified compliance with Maryland's statutory and regulatory requirements to operate in a manner that enhances residents' quality of care by providing services and activities to attain

and maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care. These implied certifications proved false because Kris-Leigh systematically violated these legal requirements. Kris-Leigh's claims for reimbursement for assisted living facility services therefore violated Maryland's False Health Claims Act. *See* Md. Code Ann., Health-Gen. § 2-602(a).

CAUSES OF ACTION
Count One
(Violations of False Health Claims Act - Services Not Rendered)

80. The State of Maryland brings this cause of action against Defendants under the Maryland False Health Claims Act. *See* Md. Code Ann., Health-Gen. §§ 2-601 – 2-611.

81. Under Maryland's False Health Claims Act, a person may not, among other things, "[k]nowingly present or cause to be presented a false or fraudulent claim for payment or approval," "[k]nowingly make, use, or cause to be made or used a false . . . statement material to a false or fraudulent claim," "[c]onspire to commit a violation" of the False Health Claims Act, or "[k]nowingly make any other false or fraudulent claim against a State health plan or State health program." *See id.* § 2-602(a).

82. Under Maryland's False Health Claims Act, knowingly means that a person: "[h]as actual knowledge of the information;" "[a]cts in deliberate ignorance of the truth or falsity of the information;" or "[a]cts in reckless disregard of the truth or falsity of the information." *See id.* § 2-601(f).

83. As more fully discussed in the allegations set forth above, which are incorporated herein, from on or about January 1, 2013 to the present, each of the Defendants, has knowingly submitted or caused to be submitted claims for reimbursement to the Medicaid program for services that Defendants did not in fact render, including, but not limited to, assessments of residents' medical condition and corresponding needs, individualized service plans to address all

services to be provided based on the assessments for each resident, and medication administration and management.

84. Each of the above submissions was a "false claim," within the meaning of the False Health Claims Act.

85. These false claims are material to the Medicaid program in determining whether to pay a claim for reimbursement for assisted living facility services.

86. In reliance on these false claims, the Medicaid program has reimbursed Kris-Leigh for assisted living facility services.

87. Section 2-603 of the Health-General Article authorizes the State of Maryland to file a civil action against a person who has violated the Maryland False Health Claims Act. Under §§ 2-602 and 2-603, the State may obtain civil penalties of up to $10,000 for each violation of the Act, an award of three times the amount of damages that the State sustained as a result of the violations of the Act, and court costs and attorney's fees.

88. Wherefore, the State of Maryland requests that this Court enter judgment in its favor and against each of the Defendants, jointly and severally, and issue an order:

(a) Requiring each of the Defendants to pay $10,000.00 for each false claim it submitted or caused to be submitted to the Maryland Medicaid program;

(b) Holding Defendants jointly and severally liable to pay to the State three times the amount of damages the State sustained as a result of the Defendants' violations of the False Health Claims Act, an amount that exceeds $75,000.00; and

(c) Awarding court costs and reasonable attorney's fees to the State.

Count Two
(Violations of False Health Claims Act – Fundamentally Worthless Services)

89. The State of Maryland brings this cause of action against Defendants under the Maryland False Health Claims Act. *See* Md. Code Ann., Health-Gen. §§ 2-601 – 2-611.

90. Under Maryland's False Health Claims Act, a person may not, among other things, "[k]nowingly present or cause to be presented a false or fraudulent claim for payment or approval," "[k]nowingly make, use, or cause to be made or used a false . . . statement material to a false or fraudulent claim," "[c]onspire to commit a violation" of the False Health Claims Act, or "[k]nowingly make any other false or fraudulent claim against a State health plan or State health program." *See id.* § 2-602(a).

91. Under Maryland's False Health Claims Act, knowingly means that a person: "[h]as actual knowledge of the information;" "[a]cts in deliberate ignorance of the truth or falsity of the information;" or "[a]cts in reckless disregard of the truth or falsity of the information." *See id.* § 2-601(f).

92. As more fully discussed in the allegations set forth above, which are incorporated herein, from on or about January 1, 2013 to the present, each of the Defendants, has knowingly submitted or caused to be submitted claims for reimbursement to the Medicaid program for substandard services that rendered the entire bundle of services worthless. These include, but are not limited to: (a) hazardous living conditions such as broken air conditioners during the summer, pervasive mold, a massive bed bug infestation; (b) security failures such as unlockable exterior doors and no effective automated device/system to alert staff to individuals entering or leaving the facility; (c) inadequate staffing to care for and meet the needs of residents; (d) untimely and inadequate assessments of residents by qualified personnel; (d) untimely and inadequate service plans to meet the needs of the residents based upon the assessments of each; (e) and mismanagement and administration of residents' medications.

93. Each of the above submissions was a "false claim," within the meaning of the False Health Claims Act.

94. These false claims are material to the Medicaid program in determining whether to

pay a claim for reimbursement for assisted living facility services.

95. In reliance on these false claims, the Medicaid program has reimbursed Kris-Leigh for assisted living facility services.

96. Section 2-603 of the Health-General Article authorizes the State of Maryland to file a civil action against a person who has violated the Maryland False Health Claims Act. Under §§ 2-602 and 2-603, the State may obtain civil penalties of up to $10,000 for each violation of the Act, an award of three times the amount of damages that the State sustained as a result of the violations of the Act, and court costs and attorney's fees.

97. Wherefore, the State of Maryland requests that this Court enter judgment in its favor and against each of the Defendants, jointly and severally, and issue an order:

(a) Requiring each of the Defendants to pay $10,000.00 for each false claim it submitted or caused to be submitted to the Maryland Medicaid program;

(b) Holding Defendants jointly and severally liable to pay to the State three times the amount of damages the State sustained as a result of the Defendants' violations of the False Health Claims Act, an amount that exceeds $75,000.00; and

(c) Awarding court costs and reasonable attorney's fees to the State.

Count Three
(Violations of False Health Claims Act – False Implied Certification)

98. The State of Maryland brings this cause of action against Defendants under the Maryland False Health Claims Act. *See* Md. Code Ann., Health-Gen. §§ 2-601 – 2-611.

99. Under Maryland's False Health Claims Act, a person may not, among other things, "[k]nowingly present or cause to be presented a false or fraudulent claim for payment or approval," "[k]nowingly make, use, or cause to be made or used a false . . . statement material to a false or fraudulent claim," "[c]onspire to commit a violation" of the False Health Claims Act, or "[k]nowingly make any other false or fraudulent claim against a State health plan or State health

program." *See id.* § 2-602(a).

100. Under Maryland's False Health Claims Act, knowingly means that a person: "[h]as actual knowledge of the information;" "[a]cts in deliberate ignorance of the truth or falsity of the information;" or "[a]cts in reckless disregard of the truth or falsity of the information." *See id.* § 2-601(f).

101. As more fully discussed in the allegations set forth above, which are incorporated herein, from on or about January 1, 2013 to the present, each of the Defendants, has knowingly submitted or caused to be submitted claims for reimbursement to the Medicaid program containing false implied certification that the Defendant facility complied with all laws and regulations described above.

102. Kris-Leigh certified that every claim it submitted to the Medicaid program for reimbursement contained true, accurate, and complete information, including that it had provided the covered services described therein.

103. During the Relevant Period, OHCQ repeatedly cited Kris-Leigh for deficiencies in violation of COMAR 10.07.14.00 regarding residents' rights, staffing, staff training and qualifications, medical assessments, delegating nurse assessments, service plans, medication management and administration, physical living conditions, and security.

104. Each of the above submissions was a "false claim," within the meaning of the False Health Claims Act.

105. These false claims are material to the Medicaid program in determining whether to pay a claim for reimbursement for assisted living facility services.

106. In reliance on these false claims, the Medicaid program has reimbursed Kris-Leigh for assisted living facility services.

107. Section 2-603 of the Health-General Article authorizes the State of Maryland to file

a civil action against a person who has violated the Maryland False Health Claims Act. Under §§ 2-602 and 2-603, the State may obtain civil penalties of up to $10,000 for each violation of the Act, an award of three times the amount of damages that the State sustained as a result of the violations of the Act, and court costs and attorney's fees.

108. Wherefore, the State of Maryland requests that this Court enter judgment in its favor and against each of the Defendants, jointly and severally, and issue an order:

(a) Requiring each of the Defendants to pay $10,000.00 for each false claim it submitted or caused to be submitted to the Maryland Medicaid program;

(b) Holding Defendants jointly and severally liable to pay to the State three times the amount of damages the State sustained as a result of the Defendants' violations of the False Health Claims Act, an amount that exceeds $75,000.00; and

(c) Awarding court costs and reasonable attorney's fees to the State.

Count Four
(Unjust Enrichment)

109. The State conferred upon Defendants benefits in the form of Medicaid reimbursement of more than $1.1 million in exchange for Defendants' promise to provide to Kris-Leigh residents timely assisted living services of a level and quality required by federal and state law and regulations.

110. Defendants appreciated and had knowledge of the benefits the State conferred upon them based upon their submission of thousands of claims for Medicaid reimbursement during the Relevant Period.

111. Defendants' acceptance and retention of the benefits conferred upon them by the State, under the circumstances more fully discussed in the allegations set forth above, which are incorporated herein, from on or about January 1, 2013 to the present, make it inequitable for Defendants to retain the benefits without a return of the money, which they obtained through fraud

and misrepresentations, and which Defendants continue to hold improperly.

112. The benefits retained by Defendants, in justice and in equity, belong to the State.

113. Wherefore, the State of Maryland requests that this Court enter judgment in its favor and against each of the Defendants, jointly and severally, and issue an order:

(a) Holding Defendants jointly and severally liable to pay to the State compensatory damages in an amount that exceeds $75,000.00; and

(b) Awarding court costs and reasonable attorney's fees to the State.

Respectfully submitted,

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May 18, 2017

DEMAND FOR JURY TRIAL

The State of Maryland demands trial by jury of all issues so triable.

Adam T. Sampson