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By /s/ Maria Coronel
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN MATEO**

12 JAMES MAXWELL, as Successor-in-Interest to
the Estate of TRUDY MAXWELL;
13 JAMES MAXWELL, individually;
14 MARCIA CUTCHIN, individually;
MONICA MAXWELL, individually;
15 MELANIE FULLER, individually;
MARYBETH HARTZELL, individually;
16 MADONNA MAXWELL, individually;
JASON MAXWELL, individually;
17 ANDREW MAXWELL, individually;

18 Plaintiffs,

19 v.

20 ATRIA MANAGEMENT COMPANY, LLC, a
21 Delaware limited liability company;
22 VENTAS AOC OPERATING HOLDINGS LLC,
dba ATRIA PARK OF SAN MATEO, a Delaware
23 limited liability company;
24 ATRIA SENIOR LIVING, INC., a Delaware
corporation;
25 WG HILLSDALE SH LP, a Delaware limited
partnership;
26 JENNIFER DUENAS, a California Resident;
and DOES 1-10,

27 Defendants.
28

CASE NO. 22-CIV-03985

COMPLAINT

1. **VIOLATIONS OF THE ELDER AND DEPENDENT ADULT CIVIL PROTECTION ACT [Welf. & Instit. Code § 15600 et seq.]**
2. **NEGLIGENCE**
3. **WRONGFUL DEATH [Code of Civil Procedure § 337.60]**

JURY TRIAL DEMANDED

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DEFENDANTS]	19

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THIRD CAUSE OF ACTION
Wrongful Death
(Code of Civil Procedure § 337.60)
[by James Maxwell, Marcia Cutchin, Monica Maxwell, Melanie Fuller, Marybeth
Hartzell, Madonna Maxwell, Jason Maxwell, and Andrew Maxwell against all
DEFENDANTS]20

VI. PRAYER FOR RELIEF 21

VII. JURY DEMAND 22

1 Plaintiff James Maxwell, as Successor-in-Interest to the Estate of Trudy Maxwell (“Trudy”),
2 and Plaintiffs James Maxwell, Marcia Cutchin, Monica Maxwell, Melanie Fuller, Marybeth Hartzell,
3 Madonna Maxwell, Jason Maxwell, and Andrew Maxwell, individually, bring this action for damages
4 against Defendants Atria Management Co. LLC, Ventas AOC Operating Holdings LLC dba Atria Park
5 of San Mateo (“ATRIA – SAN MATEO”), Atria Senior Living, Inc., WG Hillsdale SH LP, Jennifer
6 Duenas, (all Defendants collectively, “ATRIA DEFENDANTS”) and Does 1-10. Plaintiffs make the
7 following allegations.

8 **I. INTRODUCTION**

9 1. Residential care centers provide needed services to dependent and elderly adults in the
10 United States. Defendant ATRIA – SAN MATEO is a Residential Care Facility for the Elderly
11 (“RCFE”) as defined by Health and Safety Code § 1569, *et seq.* These facilities assume responsibility
12 for the well-being of highly vulnerable individuals and provide them assistance in the basic activities of
13 daily living such as dressing, feeding, and bathing. Their primary job is to keep seniors safe. ATRIA
14 DEFENDANTS did just the opposite.

15 2. This case is about stunning and inexcusable neglect and abuse that led to the death of
16 Trudy, who at the time was a 93-year-old resident of ATRIA – SAN MATEO, and wholly reliant on
17 ATRIA DEFENDANTS. On August 27, 2022, Trudy was transported to a hospital along with two
18 other residents after “mistakenly being served dishwashing liquid as juice,” according to a press release
19 disseminated by ATRIA – SAN MATEO.

20 3. That press release was inaccurate, and an attempt to obscure the truth. Trudy was served
21 a heavy-duty commercial alkaline liquid that had been poured out of its original container into a smaller
22 container. An ATRIA – SAN MATEO employee served the liquid to Trudy. The cleaner had a pH
23 level of 13.5 which was the equivalent of serving Trudy Drano. Upon ingesting the liquid, Trudy
24 immediately became distressed.

25 4. ATRIA – SAN MATEO employees waited over 30 excruciating minutes before calling
26 911. Upon arrival at the hospital, Trudy exhibited obvious and severe blistering of the mouth, throat,
27 and esophagus. The toxic chemical essentially melted the lining of Trudy’s digestive tract.

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1 5. Based on communication with Plaintiff Marcia Cutchin, first responders had been misled
2 by employees of ATRIA – SAN MATEO to believe that Trudy had located and ingested the liquid on
3 her own, which was impossible, due to her declining health.

4 6. As set forth herein, ATRIA DEFENDANTS neglected, physically abused, and/or
5 mistreated Trudy, causing her extreme pain and suffering before she died.

6 7. Trudy died from the poisoning two days later.

7 8. ATRIA DEFENDANTS’ negligent care and abuse of a 93-year-old resident is highly
8 egregious, and without question contrary to Atria’s obligations to Trudy.

9 **II. JURISDICTION AND VENUE**

10 9. Venue is proper in this County because ATRIA DEFENDANTS are located and/or
11 perform business in San Mateo County, and a substantial part of the acts, events, omissions, and
12 transactions complained of herein occurred in San Mateo County.

13 10. Each Defendant has sufficient minimum contacts with California, or otherwise
14 purposefully avails itself of the benefits and protections of California, or does business in California so
15 as to render the exercise of jurisdiction over it by the California courts consistent with traditional
16 notions of fair play and substantial justice. The facility at issue is in San Mateo County. Defendant
17 Duenas is a California resident.

18 11. The amount in controversy exceeds the jurisdictional minimum of this court.

19 **III. PARTIES**

20 **A. PLAINTIFFS**

21 12. Trudy, at all times relevant to this action, was a resident of San Mateo County. She
22 lived her entire life in San Mateo County. Trudy was, at all relevant times, over the age of 65. Trudy
23 was an “elder adult” as defined in Welfare and Institutions Code § 15610.27.

24 13. Trudy passed away on August 29, 2022, two excruciating days after being poisoned. Her
25 son and successor-in-interest, Plaintiff JAMES MAXWELL, brings this action for Elder Abuse
26 pursuant to Welfare and Institutions Code § 15600, *et seq.* on Trudy’s behalf. Pursuant to Code of Civil
27 Procedure § 377.32 and Welfare and Institutions Code § 15657.3, JAMES MAXWELL’s declaration is
28 filed concurrently herewith.

1 14. Plaintiffs JAMES MAXWELL, MARCIA CUTCHIN, MONICA MAXWELL,
2 MELANIE FULLER, MARYBETH HARTZELL, MADONNA MAXWELL, JASON MAXWELL,
3 and ANDREW MAXWELL are the surviving heirs and adult children of Trudy. They each bring this
4 action for Wrongful Death in their individual capacities pursuant to Code of Civil Procedure § 377.60.

5 **B. DEFENDANTS**

6 15. ATRIA – SAN MATEO, ATRIA SENIOR LIVING, INC., and WG HILLSDALE SH
7 LP are the licensees and operators of the RCFE known as ATRIA PARK OF SAN MATEO, physically
8 located at 2883 S. Norfolk St., San Mateo, CA 94403.

9 16. ATRIA SENIOR LIVING INC., sets policies and procedures for all Atria facilities, and
10 was woefully deficient in that obligation.

11 17. DEFENDANT JENNIFER DUENAS at all relevant times, was the Administrator for
12 ATRIA – SAN MATEO. Duenas was responsible for the administration of care at ATRIA – SAN
13 MATEO.

14 18. ATRIA – SAN MATEO, ATRIA SENIOR LIVING, INC., and WG HILLSDALE SH
15 LP hold a license with the California Department of Social Services (“CDSS”) to provide 24-hour
16 custodial care and appropriate services to residents, direct the day-to-day operations of, and otherwise
17 do business as an RCFE. RCFEs are not healthcare providers. They only provide care and supervision
18 to their elderly residents. According to State of California records, ATRIA – SAN MATEO and its
19 affiliated entities has been a licensed RCFE since 2001.

20 19. Accordingly, ATRIA DEFENDANTS were at all relevant times governed by state laws
21 and regulations regarding RCFEs, pursuant to Title 22 of the California Code of Regulations § 87100,
22 *et seq.*

23 20. ATRIA DEFENDANTS were at all relevant times providing for the care and custody of
24 Trudy, and were “care custodians” within the meaning of Welfare and Institutions Code § 15610.17(j).

25 21. RCFEs, while not healthcare facilities, are responsible for providing their residents
26 varied levels of care and supervision. Almost all residents of RCFEs are elderly.

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1 22. RCFEs must provide to residents, per California regulations, minimum services
2 including, but not limited to, care and supervision, safe and healthful living accommodations, personal
3 assistance and care as needed, and regular observation of the resident’s physical and mental condition.

4 23. ATRIA DEFENDANTS actively participated in, authorized, and/or directed the
5 operation of ATRIA – SAN MATEO and the conduct of its agents and employees through
6 employment, training, and supervision of administrators, directors, and other employees at ATRIA –
7 SAN MATEO.

8 24. PLAINTIFFS are ignorant of the true names and identities of those Defendants sued
9 herein as DOES 1 through 10, and for that reason have sued such Defendants by fictitious names.
10 Plaintiffs will seek leave of Court to amend this Complaint to identify said defendants upon discovery
11 of their identities.

12 25. PLAINTIFFS are informed and believe, and therefore allege, that each Defendant
13 designated as a DOE was responsible for the events and happenings herein referred to, which
14 proximately caused the injuries and damages to TRUDY as alleged herein.

15 **C. ALTER EGO/JOINT VENTURE**

16 26. The ATRIA DEFENDANTS are sufficiently united in their ownership and financial
17 interest, such that the acts of one must be imputed to the others. ATRIA DEFENDANTS operated in
18 such a way as to make their individual identities indistinguishable, and they are therefore alter-egos of
19 one another.

20 27. ATRIA DEFENDANTS’ corporate and business forms were established for the sole
21 purpose of insulating each other from liability, while simultaneously obscuring the corporate identities
22 of those responsible for the care and services being provided at ATRIA – SAN MATEO. By creating
23 these separate corporate bodies, the owners and/or beneficiaries of the management fees may hide from
24 the public the details of the ownership, management, and control of other such facilities, to create the
25 false appearance of each individual facility being independent of one another. However, at all relevant
26 times to this action, ATRIA DEFENDANTS had a unity of interest and ownership such that their
27 separate identities did not meaningfully exist.

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1 28. Therefore, the individual identities of the ATRIA DEFENDANTS are substantially
2 identical, and have identical ties to, identical interests in, and identical control over ATRIA – SAN
3 MATEO. Moreover, ATRIA DEFENDANTS shared a common pool of management.

4 29. Additionally, ATRIA DEFENDANTS operate pursuant to a common scheme and plan
5 of operation which renders them a joint venture.

6 30. Thus, ATRIA DEFENDANTS operated in a manner which could not meaningfully exist
7 without the other – as a joint venture sharing in profits and losses. This joint venture was operated in
8 furtherance of the maximization of profits from the operation of ATRIA – SAN MATEO by
9 underfunding and understaffing the facility, at the expense of its residents, while shielding assets from
10 liability.

11 31. ATRIA – SAN MATEO and its affiliated licensees are responsible for the “exercise of
12 general supervision over the affairs of the licensed facility” and for “establish[ing] policies concerning
13 [that facility’s] operation in conformance with [California] regulations and the welfare of the
14 individuals it serves[,]” pursuant to Title 22 of the California Code of Regulations § 87205.

15 32. In *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 573, the California Supreme Court
16 held that a “managing agent” is “one who exercises substantial discretionary authority over decisions
17 that ultimately determine corporate policy.” At all relevant times, ATRIA – SAN MATEO’s
18 administrator was Jennifer Duenas. Pursuant to Title 22 of the California Code of Regulations § 87405,
19 an administrator of an RCFE must “develop an administrative plan and procedures to ensure clear
20 definition of lines of responsibility, equitable workloads, and adequate supervision,” “recruit, employ,
21 and train qualified staff,” and “ensure the provision of services to residents with appropriate regard for
22 the residents’ physical and mental well-being and needs.” As administrator, Ms. Duenas was a
23 managing agent of ATRIA – SAN MATEO and was responsible for performing such duties in order to
24 ensure ATRIA – SAN MATEO had adequate staff to supervise and care for Trudy, as well as ensuring
25 ATRIA – SAN MATEO provided Trudy the requisite level of care.

26 33. Ms. Duenas assumed an active role in day-to-day management. She received complaints
27 by PLAINTIFFS, both verbal, and written.

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1 **IV. FACTUAL ALLEGATIONS**

2 **A. ATRIA - SAN MATEO'S REPRESENTATIONS TO THE PUBLIC**

3 34. ATRIA – SAN MATEO is a licensed RCFE as defined in Health and Safety Code §
4 1569, *et seq.* Pursuant to Health and Safety Code § 1569.2(1), a RCFE “means a housing arrangement
5 chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying
6 levels and intensities of care and supervision, protective supervision, personal care, or health-related
7 services are provided, based on their varying needs, as determined in order to be admitted and to remain
8 in the facility.” RCFEs are governed by sections 1569 through 1569.889 of the Health and Safety
9 Code, and sections 87100 through 87795 of Title 22 of the California Code of Regulations.

10 35. ATRIA DEFENDANTS represent to the public that ATRIA – SAN MATEO offers its
11 residents needed care through “specially trained staff who work with you to make sure you receive the
12 discreet, thoughtful care and support your need” as well as “[a] licensed nurse on-site 24/7,”
13 “monitoring or assistance at mealtime,” and “meals to remember.”

14 36. ATRIA DEFENDANTS further represent to the public that ATRIA – SAN MATEO has
15 a “memory care” unit, designed for residents who suffer from ailments like Alzheimer’s disease,
16 dementia, and other common diseases that tend to affect elders. ATRIA DEFENDANTS represent that
17 ATRIA – SAN MATEO offers its memory care residents “[a]n individual care plan with 24/7 support
18 [. . .] from staff with extensive dementia training.”

19 37. ATRIA DEFENDANTS market Atria’s “Life Guidance” memory care to the public as
20 offerings for those with Alzheimer’s disease, dementia, and other memory disorders common in elders.
21 Those units, according to ATRIA DEFENDANTS’s websites, “provide engaging programs and highly
22 personalized care from specially trained staff.”

23 38. The reality was that ATRIA – SAN MATEO had little resemblance to the company’s
24 advertised promises.

25 **B. DEFENDANTS’ OPAQUE CORPORATE STRUCTURE**

26 39. ATRIA – SAN MATEO is owned by Ventas, Inc., a real estate investment trust. Ventas,
27 Inc. purchased Atria Senior Homes in 2011 for \$3.1 billion, and holds over 1000 different real estate
28 properties amongst its holdings. Ventas, Inc. has created a complex corporate structure.

1 40. CDSS lists the licensees of ATRIA – SAN MATEO as DEFENDANT WG
2 HILLSDALE SH LP, a Delaware limited partnership, and DEFENDANT ATRIA MANAGEMENT
3 COMPANY LLC, a Delaware limited liability company. A search of WG HILLSDALE SH LP reveals
4 that one of its officers is DEFENDANT VENTAS AOC OPERATING HOLDINGS, LLC, a Delaware
5 limited liability company.

6 41. On the San Mateo Fictitious Names Database, the registrant of the ATRIA – SAN
7 MATEO name is DEFENDANT VENTAS AOC OPERATING HOLDINGS, LLC.

8 42. ATRIA DEFENDANTS created this complex structure to make identifying the owners
9 and directors of ATRIA – SAN MATEO as difficult as possible.

10 43. The complex structure of ATRIA – SAN MATEO’s ownership is common across
11 Ventas Inc.’s various elder care facilities. A review of Ventas Inc.’s most recent 10-K filed with the
12 Securities and Exchange Commission reveals over four thousand separate corporate forms that Ventas
13 lists as its subsidiaries, including partnerships, limited liability companies, and corporations,
14 incorporated in states all over the country.

15 **C. INADEQUATE STAFFING AND TRAINING AT ATRIA**

16 44. As part of their scheme to profit from vulnerable adults, ATRIA DEFENDANTS
17 implemented policies to cut costs and important care, including failing to sufficiently train and/or vet
18 incumbent or new employees to ensure their competence in meeting the individualized needs of ATRIA
19 – SAN MATEO’s residents, including Trudy. ATRIA DEFENDANTS also hired and retained
20 incompetent service personnel, many of whom were not properly trained or qualified to care for ATRIA
21 – SAN MATEO’s residents, including Trudy.

22 45. At all times relevant to this action, ATRIA DEFENDANTS, and each of their tortious
23 acts and omissions as alleged herein, were done in concert with one another, with reasonable certainty
24 that the scheme of promoting profits over the wellbeing of ATRIA – SAN MATEO’s residents would
25 and did in fact result in the withholding of services, which posed an extreme risk to the health, welfare,
26 and safety of Trudy and her fellow residents.

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1 46. The ATRIA DEFENDANTS were legally responsible for establishing and implementing
2 policies regarding the management and operation of ATRIA – SAN MATEO, including employee
3 staffing, budgeting, and training, pursuant to Title 22 of the California Code of Regulations § 87205.

4 47. The ATRIA DEFENDANTS’ business model is chiefly concerned with returning
5 shareholder value to its investors. In order to do so, its chief mandate is to reduce operating costs.
6 ATRIA – SAN MATEO had very few permanent employees. Instead, ATRIA DEFENDANTS availed
7 themselves of a rotating cast of temporary workers, who knew little about the residents and had no
8 significant safety training.

9 48. As a result, few employees were equipped to properly attend to and care for ATRIA –
10 SAN MATEO residents. The work was shift-based, and ATRIA – SAN MATEO rarely, if ever, held
11 pre-shift meetings to update employees on the needs of residents that had presented themselves during
12 the prior shift.

13 49. ATRIA DEFENDANTS, through their focus on profit, allowed ATRIA – SAN MATEO
14 to become a magnet for violations of their obligations under California laws and regulations.

15 **D. PATTERN OF PRIOR SAFETY ISSUES AT ATRIA – SAN MATEO**

16 **1. Atria’s History of Serious Administrative Citations**

17 50. ATRIA – SAN MATEO’s recent past is littered with issues of noncompliance with state
18 regulations. In the past five years, ATRIA – SAN MATEO has been cited for **twelve** separate violations
19 of California’s Code of Regulations and Health and Safety Code, the regulations and statutes that
20 govern the administration of RCFEs.

21 51. Of those twelve violations, four were Type A citations. Type A citations are the most
22 serious, and implicate issues of immediate risk to the health, safety, or personal rights of RCFE
23 residents.

24 52. The remaining eight citations were Type B citations. Type B citations are for violations
25 that if not remedied, could pose immediate risks to the health, safety, or personal rights of RCFE
26 residents.

27 53. On May 1, 2018, DCSS received a report of a resident’s room being unclean and sheets
28 being soiled. The DCSS administrator issued a Type A citation based on this report on January 3, 2019

1 for violating Title 22 of the California Code of Regulations § 87303(a), which requires a facility to be
2 clean, safe, sanitary, and in good operation at all times.

3 54. DCSS investigated another complaint on October 17, 2018, regarding an ATRIA – SAN
4 MATEO resident falling multiple times while in its care. The resident suffered both a head injury with
5 a laceration, and a pubic ramus fracture. On July 24, 2019, DCSS issued a Type A citation for violating
6 Title 22 of the California Code of Regulations § 87468.1(a)(2), violating the personal rights of residents
7 to be afforded safe, healthful, and comfortable accommodations, furnishings, and equipment.

8 55. On February 27, 2020, DCSS received a report involving a resident that had developed a
9 stage three pressure wound. That pressure wound eventually became a stage four pressure wound. The
10 development of this injury and subsequent worsening were changes in health condition, which required
11 ATRIA – SAN MATEO to request an exception to retain the resident in its care and provide them a
12 higher level of care. ATRIA – SAN MATEO did neither. The incidents resulted in DCSS issuing two
13 Type A citations on March 23, 2021; one for violating Health and Safety Code § 87405(d)(1)(2), for
14 failure to conform to the proper duties of an administrator; and one for violating Title 22 of the
15 California Code of Regulations § 87411(a), which requires sufficient support staff to ensure the
16 provision of personal assistance and care required by Title 22 of the California Code of Regulations §
17 87608.

18 56. On July 9, 2021, ATRIA – SAN MATEO received a Type A citation for failure to
19 ensure two staff members had updated criminal record clearances tied to ATRIA – SAN MATEO, in
20 violation of Title 22 of the California Code of Regulations § 87355(c)(1-2).

21 57. The Type B citations issued to ATRIA – SAN MATEO within the past five years
22 include citations for not reappraising residents after their conditions changed, foul odors in resident
23 rooms, and failing to maintain trash bins fully closed.

24 2. ATRIA – SAN MATEO’s History of Neglecting Trudy

25 58. Trudy began living at ATRIA – SAN MATEO in October 2020. She had been formally
26 diagnosed with dementia in 2018, but had begun cognitive decline years prior. As a result, she was
27 assigned to the memory care unit. Her family paid \$5,995 per month for her one-bedroom unit.

28 ///

1 59. From the beginning of her residency at ATRIA – SAN MATEO, ATRIA
2 DEFENDANTS were aware Trudy needed assistance to move around the facility, use the bathroom,
3 feed herself, change her clothing, and eat her meals.

4 60. During this time, COVID-19 was rampant. PLAINTIFFS were unable to meet with
5 Trudy face to face for several months. On more than one occasion, during virtual visits, PLAINTIFFS
6 were able to observe bandages and other wrappings on Trudy’s body.

7 61. Once PLAINTIFFS were able to visit Trudy in person, PLAINTIFFS began to see that
8 ATRIA – SAN MATEO’s care for Trudy did not meet expectations. On more than one visit to see
9 Trudy at ATRIA – SAN MATEO, PLAINTIFF Madonna Maxwell noted that her adult diaper was full
10 and had not been changed. Failure to change undergarments is a violation of Title 22 of the California
11 Code of Regulations § 87464(f)(4), which requires RCFEs to provide residents with personal assistance
12 and care as needed. It is also a violation of an RCFE’s duty under Title 22 of the California Code of
13 Regulations § 87265(b)(1), which requires facilities to assist residents to use the bathroom rather than
14 use diapers.

15 62. As PLAINTIFFS noticed a continuing pattern of concerning behavior, they began to
16 document and express verbal concerns to staff regarding Trudy’s treatment, as well as send written
17 complaints via email to the director of the memory care unit, Reiko Kitamori.

18 63. ATRIA – SAN MATEO did nothing to address those well-founded concerns, and
19 continued to neglect and mistreat Trudy. In less than a two-year period at ATRIA-SAN MATEO,
20 Trudy needlessly suffered numerous injuries and set-backs that should have been prevented had
21 ATRIA-SAN MATEO provided appropriate assistance and supervision. Trudy had to receive hospital
22 care multiple times as a result of ATRIA-SAN MATEO’s lapses in care. Among other things, Trudy
23 required stitches for a fall, suffered painful urinary tract infections, had impacted bowels and most
24 significantly suffered one or more falls that led to hip fractures. ATRIA – SAN MATEO failed
25 repeatedly to alert PLAINTIFFS of changes in Trudy’s condition.

26 64. As one of many examples of the poor attitude of ATRIA-SAN MATEO, when
27 PLAINTIFF Madonna Maxwell asked ATRIA – SAN MATEO staff about how Trudy’s impaction
28 could have gone unnoticed, an employee responded, “this is an assisted care facility, we don’t deal with

1 that.” Contrary to that employee’s assertion, RCFEs can and are responsible for assisting residents that
2 are suffering from fecal impaction, per Title 22 of the California Code of Regulations § 87622. Trudy’s
3 main caretaker was also unaware of her impaction until after Trudy returned from her hospitalization.

4 65. Upon review of x-rays of Trudy’s hip in July 2022, doctors at Stanford revealed to
5 PLAINTIFFS that Trudy had previously broken that same hip **twice** within the prior six months.
6 ATRIA – SAN MATEO knew or should have known that Trudy had fallen and hurt herself in that time
7 period, but did nothing to inform PLAINTIFFS of Trudy’s condition. RCFEs must inform dementia
8 patients’ families of changes in a resident’s condition in accordance with the RCFE’s Plan of
9 Operation, pursuant to Title 22 of the California Code of Regulations § 87705(b)(1).

10 66. Upon Trudy’s return to ATRIA – SAN MATEO, an assessment of Trudy’s care plan
11 finally took place. PLAINTIFFS raised the issues detailed *supra*, and Atria assured the family that she
12 would be more closely monitored going forward. PLAINTIFFS additionally mentioned that they
13 noticed Trudy’s teeth were in disrepair due to ATRIA DEFENDANTS not brushing them. ATRIA
14 DEFENDANTS, in response, raised the cost of housing Trudy by \$1,200 monthly, to a total of \$7,195,
15 citing the increased cost to account for “additional care services.”

16 67. During Trudy’s time at ATRIA – SAN MATEO, ATRIA DEFENDANTS repeatedly
17 neglected her safety and wellbeing. Staffing was minimal and constantly rotating. PLAINTIFFS recall
18 only two regular staff members that cared for Trudy, and both worked limited shifts. The facility made
19 caring for Trudy an afterthought. Title 22 of the California Code of Regulations § 87411 requires
20 RCFEs to provide sufficient and competent staffing to meet resident needs, and ATRIA – SAN
21 MATEO failed to meet this standard. This type of recklessness was a continuing, intentional, and
22 deliberate feature of ATRIA – SAN MATEO’s governance and management structure. That structure
23 resulted in similar incidents at other Atria RCFEs.

24 **E. PROBLEMS WITH POISONING AT SENIOR CARE FACILITIES**

25 68. Poisoning deaths at senior care facilities is a known industry problem, and have been
26 reported in multiple states. ATRIA – SAN MATEO failed to take any appreciable measures to address
27 this problem.

28 ///

1 69. In 2009, a 90-year-old resident died after drinking an industrial-strength detergent while
2 in the care of an assisted-living facility in Alanta, Georgia. The resident was Pro Football Hall of
3 Famer George McAfee. Mr. McAfee was a former running back for the Chicago Bears who developed
4 dementia in his later years. Mr. McAfee’s lips, esophagus and lungs were all burned from drinking the
5 caustic chemical, and he died 10 days later.¹

6 70. In November 2012, four seniors died from consuming poisonous mushrooms at a senior
7 care facility in Loomis, California. The senior care facility served the residents a meal with poisonous
8 mushrooms picked on the Loomis property. The victims were hospitalized and died several days later.²

9 71. In December 2012, a 90-year-old resident ingested dishwashing detergent in a senior
10 living facility in Oakland County, Michigan. The resident suffered severe burns to her mouth
11 esophagus, throat and stomach. The burns were so severe that surgery was not an option, and the
12 resident was unable to eat or drink. The resident died 13 days after ingesting the dishwashing
13 detergent.³

14 72. In May 2019, a resident with dementia died after swallowing chemical cleaner at an
15 assisted-living facility in Duluth, Minnesota. The resident died after consuming a “caustic chemical,”
16 which caused severe burns to his esophagus and stomach.⁴

17 73. In November 2021, a resident died after mistakenly drinking dishwasher liquid thinking
18 it was cranberry juice at Sunrise Senior Living of Lenexa, Kansas. The resident was in his mid-90s.
19 He suffered from severe burns to his esophagus, disfigurement, mental anguish and other pain.⁵

20 **F. ATRIA WAS ON NOTICE THAT A RESIDENT AT A SEPARATE**
21 **ATRIA FACILITY DRANK TOXIC LIQUID FOUR DAYS BEFORE**
22 **TRUDY BUT FAILED TO ACT**

23 74. Just four days before Trudy was fed toxic liquid while in ATRIA DEFENDANTS’ care,
24 a similar incident took place at Atria Walnut Creek RCFE. On August 23, 2022, Constantine Canoun, a

25 ¹ Available at: <https://abcnews.go.com/Health/assisted-living-facilities-loosely-regulated-understaffed/story?id=19808799>

26 ² Available at: <https://abcnews.go.com/Health/mushrooms-kill-fourth-california-senior-us-cases-rise/story?id=17826740>

27 ³ Available at: <https://www.theoaklandpress.com/2015/10/30/wrongful-death-verdict-of-5-million-awarded-to-family-of-woman-90-who-ingested-detergent-at-senior-living-facility/#:~:text=The%20family%20of%20a%2090-year-old%20woman%20who%20died,month%20in%20its%20lawsuit%20against%20Watermark%20Retirement%20Communit>
28 [es.](https://www.theoaklandpress.com/2015/10/30/wrongful-death-verdict-of-5-million-awarded-to-family-of-woman-90-who-ingested-detergent-at-senior-living-facility/#:~:text=The%20family%20of%20a%2090-year-old%20woman%20who%20died,month%20in%20its%20lawsuit%20against%20Watermark%20Retirement%20Communit)

⁴ Available at: <https://bringmethenews.com/minnesota-news/nursing-facility-resident-died-after-swallowing-chemical-cleaner>

⁵ Available at: <https://www.kansascity.com/news/local/article263095348.html>

1 resident of Atria Walnut Creek’s memory care unit and a dementia sufferer, went to the kitchen area of
2 his unit. While in the kitchen, Mr. Canoun ingested an unknown liquid that had been left unattended
3 and became extremely ill. He was transported to a local hospital.

4 75. At the time, Atria Walnut Creek said to the family and in public statements that Mr.
5 Canoun had eaten “spicy chips” and fallen ill as a result. That was an attempt to cover up Atria’s
6 liability. Constantine had suffered extreme burns and lesions to his throat, esophagus, and larynx.
7 Those injuries were consistent with having ingested a poisonous liquid. Mr. Canoun died August 31,
8 2022, nine days after ingesting the substance.

9 76. ATRIA DEFENDANTS were aware of the situation at Atria Park Walnut Creek.
10 ATRIA DEFENDANTS **did nothing** to make its other RCFEs aware of what happened at Atria Park
11 Walnut Creek, and **did nothing** to ensure proper training or staffing would be implemented to ensure
12 such an event would not happen again in the future. The red flag warning in Contra Costa was ignored.

13 77. ATRIA DEFENDANTS have tried to deflect responsibility, disclaim liability, and wash
14 their hands of an avoidable death. Had ATRIA DEFENDANTS acted immediately to alert their other
15 care facilities after Mr. Canoun drank a toxic liquid, Trudy Maxwell would still be alive today.

16 **G. ATRIA – SAN MATEO SERVES TRUDY A DEADLY LIQUID**

17 78. On the morning of August 27, 2022, at approximately 7:30 am, Trudy was in her room
18 in the memory care unit. An ATRIA – SAN MATEO employee escorted her to the cafeteria for
19 breakfast, to be eaten in the memory care unit’s common kitchen and dining area.

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1 83. An ATRIA – SAN MATEO employee took the separate container, now filled with the
2 Ecolab liquid, and poured it into cups for residents to drink. The cleaning solution smelled strongly and
3 was obviously not a beverage for humans. An ATRIA – SAN MATEO employee served Trudy the
4 liquid. ATRIA – SAN MATEO employees served the poisonous fluid to two other ATRIA – SAN
5 MATEO memory care residents. All three victims drank it.

6 84. Trudy immediately began to show signs of distress.

7 85. Inexplicably, ATRIA – SAN MATEO did not immediately call 911. **Employees did**
8 **not call 911 until over half an hour had elapsed after Trudy ingested the toxic liquid.**

9 86. Trudy was in extreme pain, distress, and agony, for over thirty minutes while Atria staff
10 simply waited. The liquid began to burn and melt her mouth, throat, and esophagus. The type of poison
11 fed to Trudy melts the digestive tract, penetrating deep into tissue – burns from these chemicals are
12 considered more severe than acid burns. Among the types of poisons that an elderly resident could
13 ingest, the Ecolab product presents a worst-case scenario. Yet, ATRIA – SAN MATEO chose to
14 purchase the dangerous chemical and in violation of the law, allowed it to be accessible to staff and
15 residents.

16 87. After ATRIA – SAN MATEO finally called 911, Trudy was transported to a hospital for
17 treatment. Upon arrival, doctors noted that she likely would not survive, due to the extent of the
18 injuries immediately noticeable to her mouth and throat.

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One week before poisoning.

88. Trudy died on August 29, 2022.



1 **H. ATRIA DEFENDANTS’ PATTERN OF MISLEADING STATEMENTS**

2 **1. The Dishwashing Liquid Misrepresentation**

3 89. The ATRIA DEFENDANTS purposely tried to downplay the San Mateo crises by
4 putting out a press release calling the substance “dishwashing liquid” when they knew it was an
5 industrial cleaner, which would cause for more damage to the person than a household dishwashing
6 liquid. At the time the press release was issued, ATRIA DEFENDANTS were well aware it was false.
7 The statement was also an attempt to head off a police investigation.

8 **2. The Spicy Chip Misrepresentation**

9 90. Atria Park Walnut Creek said in public statements that a resident had eaten “spicy chips”
10 and fallen ill as a result. That was an attempt to cover up Atria Walnut Creek’s liability. Mr. Canoun
11 had suffered extreme burns and lesions to his throat, esophagus, and larynx. Those injuries were
12 consistent with having ingested a poisonous liquid. Mr. Canoun died August 31, 2022, nine days after
13 ingesting the substance.

14 **3. Falsely Blaming the Patients**

15 91. In addition to the misleading press releases, the ATRIA DEFENDANTS pushed out a
16 false narrative that in San Mateo “dementia patients got ahold of the liquid” and the patients drank the
17 liquid themselves. This false statement was provided to first responders in San Mateo, in an attempt to
18 hide the truth and impede any investigation.

19 **V. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **Dependent Adult Abuse and Neglect**

22 **(Pursuant to Welfare and Institutions Code § 15600 et seq.)**

23 **[by Plaintiff JAMES MAXWELL as successor-in-interest to Trudy against all DEFENDANTS]**

24 92. Plaintiffs hereby re-allege and incorporate by reference each and every allegation set
25 forth above, as if fully set forth herein.

26 93. ATRIA DEFENDANTS had a substantial caretaking or custodial relationship with
27 Trudy, involving ongoing responsibility for her basic needs, which an able-bodied and fully competent
28 adult would ordinarily be capable of managing without assistance.

1 94. At all relevant times, Trudy was an elder as defined by Welfare & Institutions Code §
2 15610.27. She was ninety-three years old at the time of the incident.

3 95. The above-mentioned acts of ATRIA DEFENDANTS, and each of them, constituted
4 “abuse,” “neglect,” “abandonment,” and/or conduct likely to harm a senior within the meaning of
5 Welfare and Institutions Code § 15610 *et seq.* ATRIA DEFENDANTS caused Trudy physical pain and
6 mental suffering and deprived Trudy of the services necessary to avoid physical harm or mental
7 suffering.

8 96. ATRIA DEFENDANTS committed violations of the Elder Abuse Act by failing to
9 provide Trudy with adequate supervision and assistance to keep her safe and protect her from injury,
10 failing to provide her with adequate custodial care, and failing to protect her from health and safety
11 hazards while she was in their care and custody, in violation of Welfare and Institutions Code §
12 15610.57. Defendants negligently failed to exercise the degree of care that a reasonable person in a like
13 position would exercise, pursuant to Welfare and Institutions Code § 15610.57(a)(1).

14 97. ATRIA DEFENDANTS committed elder abuse as defined under the Elder Abuse Act by
15 administering a poisonous liquid to Trudy they knew or should have known to be dangerous, pursuant
16 to Welfare and Institutions Code § 15610.63(c).

17 98. As a direct result of the abuse of Trudy by ATRIA DEFENDANTS, and each of them,
18 Trudy suffered fear, anxiety, physical pain and discomfort, and emotional distress, all to her general
19 damage in an amount to be established according to proof.

20 99. As a direct result of the neglect of Trudy by ATRIA DEFENDANTS, Trudy was caused
21 to incur the expense of hospitalization, paramedic response, and/or other medical care, all to her special
22 damage in an amount to be established according to proof.

23 100. The conduct, acts, and omissions of ATRIA DEFENDANTS, and each of them, as
24 alleged above, are sufficient to show they are guilty of recklessness, oppression, fraud, and/or malice.
25 Each defendant ratified by conduct of the other defendants. The specific facts set forth herein show
26 ATRIA DEFENDANTS’ deliberate disregard of the high probability that Trudy would be injured by
27 ingesting a poisonous liquid. In addition to special damages, Trudy is entitled to an award against
28 ATRIA DEFENDANTS of the reasonable attorneys’ fees and costs incurred in prosecuting this case, as

1 well as an award for Trudy’s pain and suffering. Trudy is also entitled to punitive damages against
2 ATRIA DEFENDANTS in an amount to be proven at trial.

3 **SECOND CAUSE OF ACTION**

4 **Negligence**

5 **[brought by JAMES MAXWELL as successor-in-interest to Trudy against all DEFENDANTS]**

6 101. Plaintiffs hereby re-allege incorporate by reference each and every allegation set forth
7 above, as if fully set forth herein.

8 102. By virtue of their roles as caretakers and the fact that Trudy was a dependent adult,
9 DEFENDANTS had a duty to exercise a degree of care that a reasonable person in a like position
10 would exercise. DEFENDANTS failed to do so. Among other things, DEFENDANTS had a duty to:

- 11 a. Provide services that met the standard of care;
- 12 b. Ensure an adequate care plan, that identified Trudy’s needs as a dementia patient,
13 was developed, reviewed, revised, and implemented;
- 14 c. Take all reasonable precautions to ensure that Trudy remained safe;
- 15 d. Adequately supervise Trudy;
- 16 e. Treat Trudy with respect, dignity, and care.

17 103. During the period of her residence at ATRIA – SAN MATEO, DEFENDANTS
18 breached their duty to Trudy. Among other things, DEFENDANTS failed to:

- 19 a. Provide services that met professional quality;
- 20 b. Ensure an adequate care plan, that identified Trudy’s needs as a dementia patient,
21 was developed, reviewed, revised, and implemented;
- 22 c. Take all reasonable precautions to ensure that Trudy remained safe;
- 23 d. Adequately supervise Trudy;
- 24 e. Treat Trudy with respect, dignity, and care.

25 104. DEFENDANTS’ negligence, carelessness, recklessness, and unlawfulness was a
26 substantial factor in causing Trudy to suffer tremendous physical, emotional, economic damages, as
27 well as other damages, in an amount to be proven at trial.

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1 **THIRD CAUSE OF ACTION**

2 **Wrongful Death**

3 **(Code of Civil Procedure § 337.60)**

4 **[by James Maxwell, Marcia Cutchin, Monica Maxwell, Melanie Fuller, Marybeth Hartzell,**
5 **Madonna Maxwell, Jason Maxwell, and Andrew Maxwell against all DEFENDANTS]**

6 105. Plaintiffs hereby re-allege and incorporate by reference each and every allegation set
7 forth above, as if fully set forth herein.

8 106. ATRIA DEFENDANTS, and each of them, owed Trudy duties of care as reasonably
9 prudent owners, operators, agents, and employees of ATRIA – SAN MATEO. In addition, ATRIA
10 DEFENDANTS, and each of them, owed Trudy statutory and regulatory duties under federal and state
11 law.

12 107. At all relevant times herein, Trudy, as an elderly resident of an RCFE, was a vulnerable
13 adult, and a member of the group that the operative statutes and regulations were promulgated in order
14 to protect.

15 108. ATRIA DEFENDANTS' conduct as alleged herein breached their duties to Trudy, and
16 as such, was negligent. By way of example, ATRIA DEFENDANTS failed to provide the level of care
17 necessary to meet Trudy's needs when they recklessly gave her a poisonous liquid.

18 109. ATRIA DEFENDANTS' conduct, as alleged herein, was in violation of the statutes and
19 regulations promulgated to govern RCFEs, and was a substantial factor causing Trudy's death. Such
20 conduct was also negligence *per se*.

21 110. As a result of ATRIA DEFENDANTS' conduct as alleged herein, Trudy died on August
22 29, 2022.

23 111. Trudy would not have died but for ATRIA DEFENDANTS' conduct and breaches of
24 duty.

25 112. Trudy's death was foreseeable. ATRIA DEFENDANTS knew or should have known
26 that their conduct would lead to the injuries of the kind suffered by Trudy.

1 113. Plaintiffs JAMES MAXWELL, MARCIA CUTCHIN, MONICA MAXWELL,
2 MELANIE FULLER, MARYBETH HARTZELL, MADONNA MAXWELL, JASON MAXWELL,
3 and ANDREW MAXWELL, are the only heirs at law to Trudy's estate.

4 114. Prior to Trudy's death, Plaintiffs JAMES MAXWELL, MARCIA CUTCHIN, MONICA
5 MAXWELL, MELANIE FULLER, MARYBETH HARTZELL, MADONNA MAXWELL, JASON
6 MAXWELL, and ANDREW MAXWELL enjoyed the love, comfort, society, and attention of their
7 mother, Trudy.

8 115. As a direct and legal result of the acts and omissions of the Defendants alleged
9 hereinabove, said PLAINTIFFS were denied precious time with a kind and loving mother and of her
10 love, comfort, companionship, society, and emotional support, in a sum according to proof at trial.

11 116. As a further result of the acts and omissions of the Defendants, and each of them,
12 PLAINTIFFS incurred burial and funeral expenses for the proper disposition of the remains of TRUDY
13 MAXWELL, in an amount to be proven at trial.

14 117. The wrongful acts and/or omissions of ATRIA – SAN MATEO and ATRIA
15 DEFENDANTS, as herein set forth, were made, adopted, approved, authorized, endorsed, and/or
16 ratified by their officers, directors, or managing agents, and were done maliciously, oppressively,
17 and/or fraudulently, and/or with a willful and knowing disregard of the probable dangerous
18 consequences for the health and safety of Trudy. As a result, Plaintiffs are entitled to punitive damages
19 against DEFENDANTS in an amount to be determined at trial.

20 **VI. PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs pray for judgment and damages as follows:

- 22 1. For general damages according to proof against ATRIA DEFENDANTS;
- 23 2. For special damages according to proof against ATRIA DEFENDANTS;
- 24 3. For attorneys' fees against ATRIA DEFENDANTS;
- 25 4. For punitive and exemplary damages against ATRIA DEFENDANTS;
- 26 5. For costs of suit against ATRIA DEFENDANTS;
- 27 6. For such other and further relief as the Court deems just and proper.

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Dated: September 29, 2022

COTCHETT, PITRE & McCARTHY, LLP

By: _____

NIALL P. McCARTHY
ANNE MARIE MURPHY
DAVID G. HOLLENBERG

Attorneys for Plaintiffs

VII. JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: September 29, 2022

COTCHETT, PITRE & McCARTHY, LLP

By: _____

NIALL P. McCARTHY
ANNE MARIE MURPHY
DAVID G. HOLLENBERG

Attorneys for Plaintiffs