

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAIDE, L.L.C. D/B/A GENTLE SPRING
CARE HOME; SOKHENA K. HUCH;
MIKI N. TON,

Appellants,

v.

CORINNE R. DILEO AS SPECIAL
ADMINISTRATOR FOR THE ESTATE
OF THOMAS DILEO; THOMAS DILEO,
JR., AS STATUTORY HEIR TO
THOMAS DILEO; AND CINDY DILEO,
AS STATUTORY HEIR TO THOMAS
DILEO,

Appellees,

Supreme Court No.: 81804

District Court No. EA-19-797583-6
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Clerk of Supreme Court

APPELLANTS' APPENDIX VOL I

S. BRENT VOGEL
Nevada Bar No. 006858
JOHN M. ORR
Nevada Bar No. 014251
Lewis Brisbois Bisgaard & Smith LLP
6385 South Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: 702-893-3383
Attorneys for Petitioner

APPELLANTS' APPENDIX

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1.	6/27/2019	Complaint	I	APP. 00001-00010
2.	8/14/2019	Defendants Maide, LLC D/B/A Gentle Spring Care Home, Sokhena K. Huch, and Miki N. Ton's Answer to Plaintiff's Complaint	I	APP. 00011-00018
3.	9/13/2019	Maide, L.L.C., a Nevada limited-liability company d/b/a Gentle Spring Care Home; Sokhena K. Huch, an individual; Miki N. Ton's Motion to Compel Arbitration	I	APP. 00019-00026
4.	9/24/2019	Plaintiffs' Opposition to Defendants Maide, L.L.C., a Nevada limited-liability company d/b/a Gentle Spring Care Home's, Sokhena K. Huch, and Miki N. Ton's Motion to compel Arbitration	I	APP. 00027-00070
5.	10/10/2019	Maide, L.L.C, a Nevada limited-liability company d/b/a Gentle Spring Care Home; Sokhena K. Huch, an individual; Miki N. Ton's Reply in support of Defendants' Motion to Compel Arbitration	I	APP. 00071-00096
6.	01/28/2020	Transcript of Proceedings Defendants' Motion to Compel Arbitration	I	APP. 00097-00109

7.	4/21/2020	Plaintiff's Motion for Rehearing on Defendants' Motion to Compel Arbitration	I	APP. 00110-00155
8.	4/22/2020	Notice of Entry of Order Order on Defendants' Motion to Compel Arbitration	I	APP. 00156-00163
9.	5/5/2020	Maide, L.L.C., a Nevada limited-liability company d/b/a Gentle Spring Care Home, and Sokhena K. Huch, and Miki N. Ton's Opposition to Plaintiffs' Motion for Rehearing	I	APP. 00164-00204
10.	5/19/2020	Plaintiffs' Reply in support of Motion for Rehearing on Defendants' Motion to Compel Arbitration	II	APP. 00205-00253
11.	5/26/2020	Transcript of Proceedings Plaintiffs' Motion for Rehearing on Defendants' Motion to Compel Arbitration	II	APP. 00254-00273
12.	8/14/2020	Notice of Entry of Order Order Regarding Plaintiffs' Motion for Rehearing on Defendants' Motion to Compel Arbitration	III	APP. 00274-00283
13.	9/14/2020	Defendants' Notice of Appeal	III	APP. 00284-00334

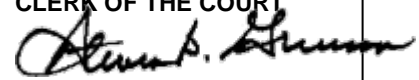
CERTIFICATE OF MAILING

I hereby certify that on this 10th day of February, 2021, I served the foregoing APPELLANTS' APPENDIX VOL. I upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

Jamie S. Cogburn, Esq.
Hunter S. Davidson, Esq.
COGBURN LAW OFFICES
2580 St. Rose Parkway, Suite 330
Henderson, NV 89074
Tel: 702.748.7777
Fax: 702.966.3880
Attorneys for Real Party In Interest

/s/ *Roya Rokni*

An employee of LEWIS BRISBOIS
BISGAARD & SMITH, LLP



CASE NO: A-19-797533-C
Department 1

COMP
COGBURN LAW OFFICES
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
jsc@cogburncares.com
Hunter S. Davidson, Esq.
Nevada Bar No. 14860
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Telephone: (702) 748-7777
Facsimile: (702) 966-3880
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

CORINNE R. DILEO as Special
Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR. as Statutory
Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
DILEO

Case No.:
Dept. No.:

Plaintiffs,

vs.

MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
INDIVIDUALS 1–10, inclusive; ROE
ENTITIES 11–20, inclusive;

Defendants.

COMPLAINT

Plaintiffs Corinne R. DiLeo, as Special Administrator for the Estate of Thomas DiLeo,
Thomas DiLeo, Jr., as Statutory Heir to Thomas DiLeo, and Cindy DiLeo, as Statutory Heir to
Thomas DiLeo (collectively, “Plaintiffs”), by and through their counsel of record, Jamie S.
Cogburn, Esq. and Hunter S. Davidson, Esq. of Cogburn Law Offices, hereby alleges as follows:

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GENERAL ALLEGATIONS

(Parties to the Action)

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3 1. Thomas DiLeo (“Decedent”) was Plaintiff Thomas DiLeo, Jr.’s and Plaintiff Cindy
4 DiLeo’s father, and Plaintiff Corinne R. DiLeo’s ex-husband. Decedent suffered significant
5 neglect while an elderly resident at Gentle Spring Care Home, a skilled-nursing facility.

6 2. Decedent died in Clark County, Nevada and, at the time of his passing, was a
7 resident of Clark County, Nevada.

8 3. Decedent was born on August 15, 1934 and, therefore, was an “older person” as
9 that term is defined in NRS 41.1395.

10 4. At all times relevant hereto, Plaintiff Corinne R. DiLeo was, and continues to be,
11 an individual residing in Clark County, Nevada.

12 5. At all times relevant hereto, Plaintiff Thomas DiLeo, Jr. was, and continues to be,
13 an individual residing in Clark County, Nevada.

14 6. At all times relevant hereto, Plaintiff Cindy DiLeo was, and continues to be, an
15 individual residing in Clark County, Nevada.

16 7. At all times relevant hereto, Defendant Maide, L.L.C d/b/a Gentle Spring Care
17 Home (“Maide”) was, and continues to be, a Nevada limited-liability company.

18 8. At all times relevant hereto, Defendant Sokhena K. Huch (“Sokhena”) was, and
19 continues to be, an individual residing in Clark County, Nevada.

20 9. At all times relevant hereto, Defendant Miki N. Ton (“Ton”) was, and continues to
21 be, an individual residing in Clark County, Nevada.

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11. At all times relevant hereto, Defendants Maide, Sokhena, Ton, Doe Individuals, and/or Roe Entities (collectively, “Defendants”) owned, operated, and/or controlled the Gentle Spring Care Home skilled-nursing facility, located at 6418 Spring Meadow Drive, Las Vegas, Nevada 89103 (“Nursing Facility”), and were in the business of providing 24-hour custodial care while subject to the requirements of Nevada state law.

12 12. At all times relevant hereto, each of the Defendants were the agents, servants,
13 employees, and/or partners of each of their Co-Defendants, and were acting within the course and
14 scope of their employment. Each of the Defendants as aforesaid, when acting as principal, was
15 negligent in the selection, hiring, training, and/or supervision of each and every other Defendant,
16 as its agent, servant, employee and partner.

18 (Abuse/Neglect of An Older Person as to Each of the Defendants)

19 13. Plaintiffs re-allege and incorporate by reference the allegations in the paragraphs
20 above as though fully set forth herein.

21 14. Decedent was born on August 15, 1934 and, therefore, was an “older person” as
22 that term is defined in NRS 41.1395.

23 15. In or about the year 2014, Decedent was admitted into the Nursing Facility for 24-
24 hour care and supervision.

1 16. Upon being admitted into the Nursing Facility, in or about the year 2014, Decedent
2 suffered from dementia.

3 17. Upon being admitted into the Nursing Facility, in or about the year 2014,
4 Defendants knew that Decedent suffered from dementia.

5 18. Defendants voluntarily assumed responsibility for Decedent's care, including,
6 among other things, providing him with food, shelter, clothing, and services necessary to maintain
7 his physical and mental health.

8 19. Given Decedent's condition upon admission into the Nursing Facility, Defendants
9 knew that Decedent required 24-hour care and supervision to ensure that his daily needs were met.

10 20. Given Decedent's condition upon admission into the Nursing Facility, Defendants
11 knew that Decedent struggled to care for himself and that Decedent relied upon the Nursing
12 Facility's staff to provide assistance.

13 21. During Decedent's residency at the Nursing Facility, Defendants failed to provide
14 the basic care to Decedent and protect him from harm.

15 22. As a result of Defendants' inadequate care, Decedent suffered various injuries.

16 23. In particular, at the beginning of July 2017, Decedent purportedly injured his leg
17 on a wheelchair while at the Nursing Facility.

18 24. To treat Decedent's leg injury, an employee or agent of the Nursing Facility
19 wrapped Decedent's leg with an elastic bandage wrap and would not let Decedent remove it.

20 25. The employee or agent of the Nursing Facility wrapped Decedent's leg too tight
21 with the elastic bandage wrap.

22 26. As a result of Decedent's leg being wrapped too tight with an elastic bandage wrap,
23 Decedent developed gangrene on his leg.

24 27. After noticing that Decedent's leg had begun to change colors, the Nursing Facility
25 attempted to treat Decedent themselves, rather than transporting Decedent to a hospital.

1 28. On or about July 21, 2017, after realizing the Nursing Facility would not transport
2 Decedent to a hospital, Plaintiff Cindy DiLeo called 911 and had Decedent immediately
3 transported to Spring Valley Hospital, in Las Vegas, Nevada.

4 29. On or about July 21, 2017, upon being admitted into Spring Valley Hospital,
5 hospital physicians determined they would need to amputate Decedent's leg that developed
6 gangrene.

7 30. On or about July 27, 2017, Decedent's leg amputation was postponed because
8 Decedent's sodium chloride levels were too high.

9 31. On or about August 3, 2017, Decedent's leg was amputated, as a result of the
10 gangrene he developed while a resident at the Nursing Facility.

11 32. On or about August 10, 2017, Decedent passed away from complications stemming
12 from Defendants' inadequate care.

13 33. Decedent's injuries and death were, in part, caused by Defendants' failure to
14 sufficiently staff the Nursing Facility with enough qualified employees to meet all of Decedent's
15 daily needs.

16 34. Defendants' staffing practices may have saved them costs associated with labor,
17 but they cost Decedent his dignity and comfort, while jeopardizing his safety, health, wellbeing
18 and, ultimately, Decedent's life.

19 35. Although Defendants owed a duty of services to Decedent in regard to his personal
20 safety, health and welfare, Defendants failed to provide Decedent services necessary to maintain
21 his physical and mental health.

22 36. Defendants' failures constitute neglect of Decedent.

23 37. Defendants' failures were made in conscious disregard of the health and safety of
24 Decedent.

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40. As a direct and proximate result of Defendants' neglect, recklessness, and other wrongful conduct, Decedent incurred medical expenses.

42. Because Defendants acted with recklessness, oppression, fraud, and/or malice, Defendants are liable for attorney's fees and costs pursuant to NRS 41.1395(2).

43. As a direct and proximate result of the aforesaid willful, intentional and unjustified conduct of the Defendants, including conduct committed by their highest managing agents, Decedent suffered significant and multiple injuries, including gangrene, an amputated leg, and further decline in his mental status and overall physical health. The conduct as set forth above was a direct consequence of the motive and plans set forth herein. As such, Defendants are guilty of malice, oppression, recklessness, and fraud, justifying an award of punitive and exemplary damages.

(Negligence as to Each of the Defendants)

45. In caring for Decedent, Defendants, Defendants' staff, and Defendants' employees/agents had a duty to exercise the level of knowledge, skill, and care of those in good standing in the community.

THIRD CAUSE OF ACTION

(Wrongful Death as to Each of the Defendants)

49. Plaintiffs re-allege and incorporate by reference the allegations in the paragraphs above as though fully set forth herein.

8 57. As a further result of Defendants' conduct, Plaintiffs have had to retain the services
9 of Cogburn Law Offices in this matter, and therefore, seek reimbursement of attorney's fees and
10 costs.

(Survival Action as to Each of the Defendants)

59. Prior to Decedent's death on or about August 10, 2017, Decedent sustained damages caused by Defendants' negligent acts in June, July, and August of 2017.

17 60. Plaintiffs are entitled to maintain a survival action against Defendants for damages,
18 and join the action pursuant to NRS 41.100.

61. Plaintiffs may recover pecuniary damages for their grief or sorrow, loss of probable support, companionship, society, comfort, and damages for pain and suffering of Decedent, and no such damages shall be liable for any debt of Decedent.

62. The Estate of Thomas DiLeo may recover any special damages, such as medical expenses, that Decedent incurred or sustained before his death, and funeral expenses.

63. Plaintiffs may recover any penalties, including, but not limited to, exemplary or punitive damages, that Decedent would have recovered if he had survived.

1 64. Plaintiffs have individually suffered severe emotional distress, loss of society,
2 companionship and comfort, grief, sorrow, mental pain and suffering, psychiatric impairment and
3 loss of enjoyment of life as a proximate cause of the acts or omissions of Defendants, their servants,
4 agents, and employees, in excess of Fifteen Thousand Dollars (\$15,000.00).

5 65. Plaintiffs are informed and believe that the alleged acts of the Defendants were
6 done with conscious disregard and deliberate indifference of the rights, welfare, and safety of
7 Plaintiff and Decedent

8 66. As a further result of Defendants' conduct, Plaintiffs have had to retain the services
9 of Cogburn Law Offices in this matter, and therefore, seek reimbursement of attorney's fees and
10 costs.

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PRAYER FOR RELIEF

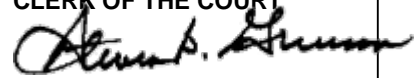
WHEREFORE, Plaintiffs pray for judgment against all Defendants, and each of them, as follows:

1. For compensatory damages in an amount in excess of \$15,000;
2. For special damages in an amount in excess of \$15,000;
3. For punitive damages in an amount in excess of \$15,000;
4. For reasonable attorney's fees and costs incurred herein;
5. For additional damages pursuant to NRS Chapter 41;
6. For pre-judgment and post judgment interest;
7. For costs of suit; and
8. For such other and further relief as the court may deem just and proper.

DATED this 27th day June, 2019.

COGBURN LAW OFFICES

By: Hunter S. Davidson, Esq.
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
Hunter S. Davidson, Esq.
Nevada Bar No. 14860
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Attorneys for Plaintiffs



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 Brent.Vogel@lewisbrisbois.com
JOHN M. ORR
3 Nevada Bar No. 14251
John.Orr@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
TEL: 702.893.3383
6 FAX: 702.893.3789

7 Attorneys for *Maide, L.L.C, d/b/a Gentle Spring*
8 *Care Home, Sokhena K. Huch, and Miki N. Ton*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11
12 CORINNE R. DILEO as Special
Administrator for the ESTATE OF THOMAS
13 DILEO; THOMAS DILEO, JR., as Statutory
Heir to THOMAS DILEO; and CINDY
14 DILEO, as Statutory Heir to THOMAS
DILEO,

15 Plaintiffs,

16 vs.

17 MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
18 HOME; SOKHENA K. HUCH, an individual;
19 MIKI N. TON, an individual; DOE
INDIVIDUALS 1-10, inclusive; ROE
20 ENTITIES 11-20, inclusive,

21 Defendants.

CASE NO. A-19-797533-C
Dept. No.: 1

**DEFENDANTS MAIDE, LLC D/B/A
GENTLE SPRING CARE HOME,
SOKHENA K. HUCH, AND MIKI N.
TON'S ANSWER TO PLAINTIFFS'
COMPLAINT**

22 COME NOW Defendants MAIDE, LLC d/b/a GENTLE SPRING CARE HOME,
23 SOKHENA K. HUCH, and MIKI N. TON, by and through their attorneys of record S. Brent Vogel,
24 Esq. and John M. Orr, Esq., of the law firm of Lewis, Brisbois, Bisgaard & Smith, LLP, and in answer
25 to Plaintiffs' Complaint on file herein, admit, deny, and allege as follows:

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1 **GENERAL ALLEGATIONS**

2 **(Parties to the Action)**

3 1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendants deny each and every
4 allegation contained therein.

5 2. Answering Paragraph 2 of Plaintiffs' Complaint, Defendants are without sufficient
6 information or knowledge to form a belief as to the truth or falsity of the allegations contained therein
7 and upon that basis, denies each and every allegation contained therein.

8 3. Answering Paragraph 3 of Plaintiffs' Complaint, Defendants are without sufficient
9 information or knowledge about the decedent's date of birth, therefore denies the allegation.
10 Defendant admits that decedent was an "older person" under NRS 41.1395.

11 4. Answering Paragraphs 4, 5, 6, and 10 of plaintiffs' Complaint, Defendants are without
12 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations
13 contained therein and upon that basis, denies each and every allegation contained therein.

14 5. Answering Paragraphs 7, 8, 9, and 11 of Plaintiffs' Complaint, Defendants admit the
15 allegations therein.

16 6. Answering Paragraph 12 of Plaintiffs' Complaint, Defendants deny the allegations
17 therein.

18 **FIRST CAUSE OF ACTION**

19 **(Abuse/Neglect of An Older person as to Each of the Defendants)**

20 7. Answering Paragraph 13 of Plaintiffs' Complaint, Defendants hereby repeat, reallege,
21 and incorporate by reference their responses to Paragraphs 1 through 6 as though fully set forth
22 herein.

23 8. Answering Paragraph 14 of Plaintiffs' Complaint, Defendants are without sufficient
24 information or knowledge about the decedent's date of birth, therefore Defendants deny the
25 allegations contained therein. Defendants admit that decedent was an "older person" as that term is
26 defined in NRS 41.1395.

27 9. Answering Paragraphs 15 and 16 of Plaintiffs' Complaint, Defendants are without
28 sufficient information or knowledge to form a belief as to the truth or falsity of the allegations

1 contained therein and upon that basis, denies each and every allegation contained therein.

2 10. Answering Paragraph 17 of Plaintiffs' Complaint, Defendants are without sufficient
3 information or knowledge about the date of the admission of decedent to the Nursing Facility,
4 therefore denies the allegations contained therein. Defendant admits that decedent suffered from
5 dementia.

6 11. Answering Paragraph 18 of Plaintiffs' Complaint, Defendants admit they assumed the
7 care of Decedent. Defendants deny the remaining allegations contained therein.

8 12. Answering Paragraphs 19, 20, 21, and 22 of Plaintiffs' Complaint, Defendants deny
9 the allegations contained therein.

10 13. Answering Paragraph 23 of Plaintiffs' Complaint, Defendants admit the allegations
11 contained therein.

12 14. Answering Paragraphs 24, 25, 26, and 27 of Plaintiffs' Complaint, Defendants deny
13 the allegations contained therein.

14 15. Answering Paragraphs 28, 29, 30, 31, and 32 of Plaintiffs' Complaint, Defendants are
15 without sufficient information or knowledge to form a belief as to the truth or falsity of the
16 allegations contained therein and upon that basis, deny each and every allegation contained therein.

17 16. Answering Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 of Plaintiffs'
18 Complaint, Defendants deny the allegations contained therein.

19 **SECOND CAUSE OF ACTION**

20 **(Negligence as to Each of the Defendants)**

21 17. Answering Paragraph 44 of Plaintiffs' Complaint, Defendants hereby repeat, reallege,
22 and incorporate by reference their responses to Paragraphs 1 through 16 as though fully set forth
23 herein.

24 18. Answering Paragraphs 45, 46, 47, and 48 of Plaintiffs' Complaint, Defendants deny
25 the allegations contained therein.

26 **THIRD CAUSE OF ACTION**

27 **(Wrongful Death as to Each of the Defendants)**

28 19. Answering Paragraph 49 of Plaintiffs' Complaint, Defendants hereby repeat, reallege,

1 and incorporate by reference their responses to Paragraphs 1 through 18 as though fully set forth
2 herein.

3 20. Answering Paragraphs 50, 51, 52, 53, 54, 55, 56, and 57 of Plaintiffs' Complaint,
4 Defendants deny the allegations contained therein.

5 **FOURTH CAUSE OF ACTION**

6 **(Survival Action as to Each of the Defendants)**

7 21. Answering Paragraph 58 of Plaintiffs' Complaint, Defendants hereby repeat, reallege,
8 and incorporate by reference their responses to Paragraphs 1 through 20 as though fully set forth
9 herein.

10 22. Answering Paragraphs 59, 60, 61, 62, 63, 64, 65, and 66 of Plaintiffs' Complaint,
11 Defendants deny the allegations contained therein.

12 **CONCLUDING ANSWER TO ALL ALLEGATIONS**

13 23. All allegations not specifically addressed above due to the nature of the language and
14 construction of the allegations, or for any other reason, are specifically denied.

15 **AFFIRMATIVE DEFENSES**

16 1. Plaintiffs' Complaint fails to state a claim against Answering Defendants upon which
17 relief can be granted.

18 2. Plaintiffs' Complaint is barred by the applicable statute of limitations.

19 3. The injuries, if any, suffered by Plaintiffs as set forth in the Complaint were caused in
20 whole or in part by the negligence of a third party or third parties over which Answering Defendants
21 had no control.

22 4. The damages, if any, suffered by Plaintiffs are not the result of any acts of omission,
23 commission, or negligence of Answering Defendants, but were the result of a known risk, which was
24 consented to by Plaintiffs.

25 5. Pursuant to NRS 41A.110, Answering Defendants are entitled to a conclusive
26 presumption of informed consent.

27 6. The damages, if any, incurred by Plaintiffs are not attributable to any act, conduct, or
28 omission on the part of Answering Defendants.

1 7. Answering Defendants Deny that that they were negligent or otherwise culpable in
2 any matter or in any degree with respect to the matters set forth in Plaintiffs' Complaint.

3 8. It has been necessary for Answering Defendants to employ the services of an attorney
4 to defend this action and a reasonable sum should be allowed Answering Defendants for attorneys'
5 fees, together with costs of suit incurred herein.

6 9. Pursuant NRS 41A.035 Plaintiffs' non-economic damages, if any, may not exceed
7 \$350,000.

8 10. Answering Defendants are not jointly liable with any other entities that may or may
9 not be named in this action, and will only be severally liable for that portion of Plaintiffs' claims that
10 represent the percentage of negligence attributable to Answering Defendants, if any.

11 11. Plaintiffs' damages, if any, were not proximately caused by Answering Defendants.

12 12. Plaintiffs' injuries and damages, if any, are the result of forces of nature over which
13 Answering Defendants had no control or responsibility.

14 13. Plaintiffs are barred from asserting any claims against Answering Defendants because
15 the alleged damages were the result of one or more unforeseeable intervening and superseding causes.

16 14. Plaintiffs failed to mitigate damages, if any.

17 15. Plaintiffs failed to allege facts in support of any award of pre-judgment interest.

18 16. The incident alleged in the Complaint, and the resulting damages, if any, to Plaintiffs,
19 were proximately caused or contributed to by Plaintiffs' own negligence, and such negligence was
20 greater than the negligence, if any, of Answering Defendants.

21 17. Plaintiffs failed to substantively comply with NRS 41A.071.

22 18. At all times mentioned herein, Answering Defendants acted reasonably and in good
23 faith with regard to the acts and transactions which are the subject of this lawsuit.

24 19. To the extent Plaintiffs have been reimbursed from any source for any special
25 damages claimed to have been sustained as a result of the incidents alleged in Plaintiffs' Complaint,
26 Answering Defendants may elect to offer those amounts into evidence and, if Answering Defendants
27 elect, Plaintiffs' special damages shall be reduced by those amounts pursuant to NRS 42.021.

28 20. Answering Defendants thereby incorporates by reference those affirmative defenses

1 enumerated in NRCP 8 as though fully set forth herein. In the event further investigation or
2 discovery reveals the applicability of such defenses, Answering Defendants reserve the right to seek
3 leave of the court to amend this Answer to assert the same. Such defenses are incorporated herein by
4 reference for the purpose of not waiving the same.

5 21. Answering Defendants avail themselves of all affirmative defenses and limitations of
6 action as set out in NRS 41.085, 41A.035, 41A.045, 41A.061, 41A.071, 41A.097, 41A.100, 42.005,
7 42.021, 41.141, and all applicable subparts.

8 22. NRS Chapters 41 and 41A limit damages that may be collectable against Answering
9 Defendants.

10 23. Plaintiffs' claims are barred, in whole or part, by the doctrine of laches.

11 24. Plaintiffs' claims are barred, in whole or part, by the doctrines of waiver, ratification
12 and/or estoppel.

13 25. Plaintiffs have not suffered any actual damages or losses.

14 26. Plaintiffs lack standing to bring suit under the counts alleged in the Complaint.

15 27. Plaintiffs' alleged losses were not actually or proximately caused by Answering
16 Defendants.

17 28. Plaintiffs' Complaint fails to allege facts giving rise to punitive damages.

18 29. Pursuant to NRCP 11, as amended, all applicable Affirmative Defenses may not have
19 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the
20 filing of Answering Defendants' Answer and, therefore, Answering Defendants reserve their right to
21 amend this Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

22 30. Plaintiffs' claims are subject to dismissal pursuant to an agreement between the parties
23 to arbitrate any claims arising from Decedents care and treatment.

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WHEREFORE, Answering Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by way of the Complaint on file herein;
2. For reasonable attorneys' fees and costs of suit incurred herein;
3. For trial by jury, and;
4. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 14th day of August, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ John M. Orr
S. BRENT VOGEL
Nevada Bar No. 006858
JOHN M. ORR
Nevada Bar No. 14251
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383

*Attorneys for Defendants Maide, L.L.C, d/b/a
Gentle Spring Care Home, Sokhena K. Huch, and
Miki N.Ton*

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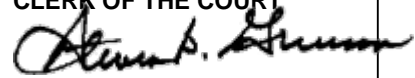
CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2019, a true and correct copy of **DEFENDANTS MAIDE, LLC D/B/A GENTLE SPRING CARE HOME, SOKHENA K. HUCH, AND MIKI N. TON'S ANSWER TO PLAINTIFFS' COMPLAINT** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

Jamie S. Cogburn, Esq.
Hunter S. Davidson, Esq.
2580 St. Rose Parkway, Suite 330
Henderson, NV 89074
Tel: (702) 748-7777
Fax: (702) 966-3880

By /s/ Roya Rokni
an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

3



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 Brent.Vogel@lewisbrisbois.com
JEFFREY H. BALLIN
3 Nevada Bar No. 004913
Jeffrey.ballin@lewisbrisbois.com
4 JOHN M. ORR
Nevada Bar No. 14251
5 John.Orr@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
7 702.893.3383
FAX: 702.893.3789
8 *Attorneys for Defendants Maide, L.L.C, d/b/a Gentle Spring Care Home,*
Sokhena K. Huch, and Miki N. Ton

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 CORINNE R. DILEO as Special
13 Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR., as Statutory
14 Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
15 DILEO,

16 Plaintiffs,

17 vs.

18 MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
19 HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
20 INDIVIDUALS 1-10, inclusive; ROE
ENTITIES 11-20, inclusive,

21 Defendants.
22

CASE NO. A-19-797533-C
Dept. No.: 1

**MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
HOME; SOKHENA K. HUCH, an
individual; MIKI N. TON's MOTION TO
COMPEL ARBITRATION**

[HEARING REQUESTED]

23 Defendants MAIDE, L.L.C, a Nevada limited-liability company d/b/a GENTLE SPRING
24 CARE HOME; SOKHENA K. HUCH, an individual; MIKI N. TON (collectively referred to as
25 "Defendants"), by and through their attorneys of record, S. Brent Vogel, Esq., Jeffrey H. Ballin,
26 Esq., and John M. Orr, Esq. of the Law Firm LEWIS BRISBOIS BISGAARD & SMITH, hereby
27 file this Motion to Compel Arbitration.

28 ///

1 This Motion is based upon the papers and pleadings on file in this case, the attached
2 exhibits, the Memorandum of Points and Authorities submitted herewith, and any argument made
3 at the time of hearing in this matter.

4 DATED this 13th day of September, 2019.

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

8 By /s/ John M. Orr

9 S. BRENT VOGEL

Nevada Bar No. 6858

10 JOHN M. ORR

Nevada Bar No. 14251

6385 S. Rainbow Boulevard, Suite 600

11 Las Vegas, Nevada 89118

12 Tel. 702.893.3383

13 *Attorneys for Defendants, The Heights of Summerlin,*
14 *LLC*

15 **MEMORANDUM OR POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 This case arises out of the care and treatment that Thomas Dileo received while admitted at
18 the Gentle Spring Care Home in Las Vegas. Plaintiff Corinne Dileo, as administrator of Mr.
19 Dileo's Estate, Thomas Dileo, Jr., and Cindy Dileo ("Plaintiffs") filed a Complaint against
20 Defendants on June 27, 2019, alleging, *inter alia*, that Gentle Spring's employees negligently
21 failed to supervise and care for Mr. Dileo. The Complaint further alleges that due to the alleged
22 negligence of Defendants, Mr. Dileo died on November 16, 2017.

23 At the outset of Mr. Dileo's residency at Gentle Spring, Plaintiff Corinne Dileo, as Mr.
24 Dileo's personal representative, voluntarily executed a Resident Agreement Addendum ("the
25 Agreement") on January 30, 2015. A complete copy of this Agreement is attached hereto as
26 Exhibit. "A." Amongst other important terms, this Agreement provided as follows: "Any
27 controversy, dispute, or disagreement, whether sounding in tort or contract law, arising out of or
28 relating to this Agreement, the breach thereof, or the subject matter thereof, shall be settled

1 exclusively by binding arbitration....*Id.*

2 **II. ARGUMENT**

3 In Nevada, “strong public policy favors arbitration, and arbitration clauses are generally
4 enforceable.” *Gonski v. Second Judicial Dist. Court of Nev.*, 245 P.3d 1164, 1168 (Nev. 2010).
5 Both the Nevada Legislature and Nevada Supreme Court support the enforcement of arbitration
6 provisions for alternative dispute resolution in Nevada. In fact, the Nevada Supreme Court has
7 noted that arbitration is favored in this state because arbitration “generally avoids the higher costs
8 and longer time periods associated with traditional litigation.” *D.R. Horton, Inc. v. Green*, 120
9 Nev. 549, 553, 96 P.3d 1159, 1162 (2004). Accordingly, Nevada courts have uniformly held that
10 agreements to arbitrate are specifically enforceable and any doubts concerning the arbitrability of
11 the subject matter of the disputes are to be resolved in favor of arbitration. *See Silverman v.*
12 *Fireman's Fund Ins. Co.*, 96 Nev. 30 (1980); *see also Exber, Inc. v. Sletten Const. Co.*, 92 Nev.
13 721 (1976).
14

15 Additionally, the Nevada Legislature has enacted the Uniform Arbitration Act, which
16 provides the correct procedure the District Court must apply when considering a Motion to Compel
17 Arbitration where one party refuses to arbitrate:
18

19 NRS § 38.221 Motion to compel or stay arbitration.

20 1. On motion of a person showing an agreement to arbitrate and
21 alleging another person’s refusal to arbitrate pursuant to the
22 agreement:

23 (a) If the refusing party does not appear or does not oppose the
24 motion, the court shall order the parties to arbitrate; and

25 (b) If the refusing party opposes the motion, the court shall proceed
26 summarily to decide the issue and order the parties to arbitrate
27 unless it finds that there is no enforceable agreement to arbitrate.

28 2. On motion of a person alleging that an arbitral proceeding has
been initiated or threatened but that there is no agreement to
arbitrate, the court shall proceed summarily to decide the issue. If
the court finds that there is an enforceable agreement to arbitrate, it
shall order the parties to arbitrate.

1 3. If the court finds that there is no enforceable agreement, it may
2 not, pursuant to subsection 1 or 2, order the parties to arbitrate.

3 4. The court may not refuse to order arbitration because the claim
4 subject to arbitration lacks merit or grounds for the claim have not
5 been established.

6 5. If a proceeding involving a claim referable to arbitration under
7 an alleged agreement to arbitrate is pending in court, a motion
8 under this section must be made in that court. Otherwise, a motion
9 under this section may be made in any court as provided in NRS
10 38.246.

11 6. If a party makes a motion to the court to order arbitration, the
12 court on just terms shall stay any judicial proceeding that involves a
13 claim alleged to be subject to the arbitration until the court renders a
14 final decision under this section.

15 7. If the court orders arbitration, the court on just terms shall stay
16 any judicial proceeding that involves a claim subject to the
17 arbitration. If a claim subject to the arbitration is severable, the
18 court may limit the stay to that claim.

19 Pursuant to this statute, the Court, when receiving a Motion to Compel Arbitration must
20 “summarily” decide the issue and “shall” order the parties to submit to arbitration unless the Court
21 finds that no arbitration agreement actually exists. The statute does not permit the Court to
22 consider other factors such as the merits of the claim when ruling on the Motion.

23 It has long been the policy in Nevada that absent some countervailing reason, contracts will
24 be construed from the written language and enforced as written. *Ellison v. California State Auto.*
25 *Ass’n*, 106 Nev. 601 (1990). This Court is bound to enforce the plain terms of contracts. *Lindley*
26 *& Co. v. Piggly Wiggly Nev. Co.*, 55 Nev. 458, 465 (1935) (“Where language of contract is not
27 ambiguous, court must enforce contract in accordance with its provisions.”). *Bell v. Leven*, 120
28 Nev. 388 (2004) (holding that when the terms of a contract are clear, “the courts must enforce the
contract according to its terms.”).

In this matter, both the plain terms of the Agreement, as well as Nevada law favoring
arbitration, requires the Complaint to be submitted to binding arbitration. Gentle Spring and Mr.
Dileo, through his personal representative, Plaintiff Corinne Dileo, entered into an agreement to

1 arbitrate any dispute arising out of the his residency at Gentle Spring. Accordingly, because the
2 parties in this case have a prior agreement to submit any disputes to arbitration, Defendants
3 respectfully request that this Court enter an Order compelling Plaintiff to submit to binding
4 arbitration in this matter.

5 **III. CONCLUSION**

6 Based upon the foregoing, Defendants respectfully request that this Honorable Court grant
7 Defendants' Motion to Compel Arbitration.
8

9 DATED this 13th day of September, 2019

10 LEWIS BRISBOIS BISGAARD & SMITH LLP
11
12

13 By /s/ John M. Orr

14 S. BRENT VOGEL
Nevada Bar No. 006858
15 JOHN M. ORR
Nevada Bar No. 14251
16 6385 S. Rainbow Boulevard, Suite 600
17 Las Vegas, Nevada 89118
Tel. 702.893.3383
18 *Attorneys for Defendant The Heights of*
Summerlin, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2019, a true and correct copy of **MAIDE, L.L.C, a Nevada limited-liability company d/b/a GENTLE SPRING CARE HOME; SOKHENA K. HUCH, an individual; MIKI N. TON's MOTION TO COMPEL ARBITRATION** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

Jamie S. Cogburn, Esq.
Hunter S. Davidson, Esq.
COGBURN LAW OFFICES
2580 St. Rose Parkway, Suite 330
Henderson, NV 89074
Tel: 702.748.7777
Fax: 702.966.3880
Attorneys for Plaintiffs

By /s/ *Roya Rokni*
an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT ‘A’

BELLA ESTATE CARE HOME

Resident Agreement Addendum

Grievance and Arbitration

1. **Grievances:** Resident may voice reasonable grievances about services rendered by staff or other personnel and the Home shall record such grievances upon request to do so. In the event of a written grievances, the Home shall investigate it and make written reply to residents of the Home's findings with a reasonable period thereafter.

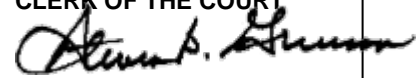
2 **Arbitration:** Any controversy, dispute or disagreement, whether sounding in tort or contract to law, arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, shall be settled exclusively by binding arbitration, which shall be conducted in (City, State) in accordance with American health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the Arbitration, shall be binding of all parties to the agreement and judgment on the award rendered by the arbitrator maybe entered in any court having jurisdiction thereof. The parties shall agree upon a sole arbitrator of their choice and if they cannot agree on a single arbitrator there shall be three arbitrators with the neutrals arbitrator chosen by the parties' nominated arbitrators.

Cornelia R. D. Co
Resident Responsible Party

1/30/2015
Date

At
Resident Responsible Party

1/30/15
Date



COGBURN LAW
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
jsc@cogburncares.com
Hunter S. Davidson, Esq.
Nevada Bar No. 14860
hsd@cogburncares.com
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Telephone: (702) 748-7777
Facsimile: (702) 966-3880
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

CORINNE R. DILEO as Special
Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR. as Statutory
Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
DILEO

Plaintiffs,

vs.

MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
INDIVIDUALS 1–10, inclusive; ROE
ENTITIES 11–20, inclusive;

Defendants.

Case No.: A-19-797533-C
Dept. No.: 1

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS MAIDE, L.L.C. d/b/a
GENTLE SPRING CARE HOME'S,
SOKHENA K. HUCH'S, AND MIKI N.
TON'S MOTION TO COMPEL
ARBITRATION**

**Hearing Date: October 17, 2019
Hearing Time: In Chambers**

Plaintiffs Corinne R. DiLeo, as Special Administrator for the Estate of Thomas DiLeo,
Thomas DiLeo, Jr., as Statutory Heir to Thomas DiLeo, and Cindy DiLeo, as Statutory Heir to
Thomas DiLeo (collectively, "Plaintiffs"), by and through their counsel of record, Jamie S.
Cogburn, Esq. and Hunter S. Davidson, Esq. of Cogburn Law, hereby file their Opposition
("Opposition") to Defendants Maide, L.L.C. d/b/a Gentle Spring Care Home's, Sokhena K. Huch's,
and Miki N. Ton's (collectively, "Defendants") Motion to Compel Arbitration ("Motion").

1 This Opposition is made and based upon the following Memorandum of Points and
2 Authorities, the papers and pleadings on file herein, any exhibits attached hereto, and any oral
3 argument this Court may entertain at the time of hearing on this matter.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 This case arises from the neglect of an “older person,”¹ Thomas DiLeo (“Decedent”), while
7 he was admitted at Defendant’s skilled-nursing facility. After being admitted for dementia,
8 Decedent injured his leg on a wheelchair while in the skilled-nursing facility. When treating
9 Decedent’s leg, Defendants wrapped his leg too tightly with an elastic bandage wrap, causing his
10 leg to develop gangrene. Within weeks of his leg injury, Decedent was transported to the hospital,
11 where he had his leg amputated to reduce further harm from the gangrene. Decedent passed away
12 one week after the amputation.

13 Defendant now seeks to compel this matter into binding arbitration based upon an
14 Arbitration Agreement that makes absolutely no reference to any of the Defendants or their
15 representatives. In addition, the Arbitration Agreement lacks the statutorily-mandated
16 authorization that indicates Decedent affirmatively agreed to the specific provision mandating
17 “any controversy, dispute or disagreement” be submitted to binding arbitration. As such,
18 Defendants’ Motion to Compel should be denied.

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25 ¹ See NRS 41.1395.

1 **II. BACKGROUND**

2 **A. Statement of Relevant Facts**

3 As alluded to above, Defendants Maide, L.L.C. d/b/a Gentle Spring Care Home (“Maide”),
4 Sokhena K. Huch (“Huch”), and Miki N. Ton (“Ton”), at all relevant times, owned, operated, and
5 controlled the Gentle Spring Care Home skilled-nursing facility, located at 6418 Spring Meadow
6 Drive, Las Vegas, Nevada 89103 (“Nursing Facility”).²

7 In or about the year 2014, Decedent was admitted to Defendants’ Nursing Facility because
8 he suffered from dementia and required 24-hour care and supervision. This constant care and
9 supervision included Decedent’s most basic needs, such as, providing him with food, shelter,
10 clothing, and services necessary to maintain his physical and mental health.

11 In or about July 2017, Decedent injured his leg on a wheelchair while at the Nursing
12 Facility. To treat Decedent’s leg injury, an employee or agent of the Nursing Facility wrapped
13 Decedent’s leg with an elastic bandage wrap and would not let Decedent remove it, despite him
14 expressing discomfort. Unfortunately for Decedent, the elastic band wrap was applied too tightly,
15 causing Decedent to develop gangrene on his leg. After noticing that Decedent’s leg began to
16 change colors, the Nursing Facility attempted to treat Decedent themselves, rather than
17 transporting him to a hospital.

18 On or about July 21, 2017, after realizing the Nursing Facility would not transport
19 Decedent to a hospital, Plaintiff Cindy DiLeo called 911 and had Decedent immediately
20 transported to Spring Valley Hospital. Upon being admitted to Spring Valley Hospital, hospital
21 physicians determined they needed to amputate Decedent’s leg that developed gangrene. On or
22 about August 3, 2017, Decedent’s leg was amputated. On or about August 10, 2017, Decedent
23 passed away from complications stemming for Defendant’s inadequate care.

24 _____
25 ² See Pl.’s Comp. at ¶ 11; Def.’s Answer at ¶ 5 (“Answering Paragraphs 7, 8, 9 and 11 of Plaintiffs’ Complaint, Defendant admits to the allegations contained therein.”).

1 **B. Procedural History**

2 On June 27, 2019, Plaintiffs filed their Complaint, asserting the following causes of action
3 against each of the Defendants: (1) Abuse/Neglect of an Older Person; (2) Negligence; (3)
4 Wrongful Death; and (4) Survival Action. On August 14, 2019, Defendants filed their Answer to
5 Plaintiff's Complaint.

6 On September 13, 2019, Defendants filed the underlying Motion arguing the instant matter
7 should be removed into binding arbitration pursuant to the Arbitration Agreement purportedly
8 entered between Decedent and Defendants on January 30, 2015.³ The Arbitration Agreement
9 provided by Defendants is merely part of a one-page "Resident Agreement Addendum."
10 Importantly, the Arbitration Agreement only lists the names of Plaintiff Corinne R. DiLeo, who
11 had a power of attorney over Decedent, and Bella Estate Home Care, which is an entirely different
12 nursing facility, located at 3140 Coachlight Circle, Las Vegas, Nevada 89117.⁴ That is, the
13 Arbitration Agreement makes no mention of Defendant Maide, Defendant Huch, Defendant Ton,
14 or any other individual or entity that has the authority to bind Defendants to an Arbitration
15 Agreement. Notwithstanding these deficiencies, the Arbitration Agreement, in relevant part, states:

16 **2 Arbitration:** Any controversy, dispute or disagreement, whether sounding
17 in tort or contract to law, arising out of or relating to this Agreement, the breach
18 thereof, or the subject matter thereof, shall be settled exclusively by binding
19 arbitration, which shall be conducted in (City, State) in accordance with American
20 health [sic] Lawyers Association Alternative Dispute Resolution Service Rules of
21 Procedure for Arbitration, and which to the extent of the subject matter of the
Arbitration, shall be binding of all parties to the agreement and judgment on the
award rendered by the arbitrator maybe [sic] entered in any court having
jurisdiction thereof. The parties shall agree upon a sole arbitrator of their choice
and if they cannot agree on a single arbitrator there shall be three arbitrators with
the neutrals [sic] arbitrator chosen by the parties' nominated arbitrators.

22
23 ³ See generally Exhibit A of Defendants Maide, L.L.C. d/b/a Gentle Spring Care Home's, Sokhena K. Huch's, and Miki N. Ton's Motion to Compel Arbitration.

24 ⁴ See Nevada Division of Public and Behavioral Health ("NVDPBH") Licensee Search, attached hereto as **Exhibit 1**;
25 NVDPBH May 15, 2014 Inspection of Bella Estate Care Home, attached hereto as **Exhibit 2**; NVDPBH April 1, 2015 Inspection of Bella Estate Care Home, attached hereto as **Exhibit 3**; Stipulation for Settlement of Disciplinary Actions, entered August 6, 2015, attached hereto as **Exhibit 4**, at ¶ 3.

1 **III. LEGAL ARGUMENT**

2
3 **A. Defendant’s Motion to Compel Arbitration should be denied because the Arbitration Agreement is void and unenforceable under NRS 597.995.**

4 NRS 597.995(1) (2013)⁵ states that any agreement with a provision requiring a person to
5 submit to arbitration “any dispute arising between the parties” must include specific authorization
6 indicating the person affirmatively agrees to *that provision*. If the agreement fails to include
7 specific authorization for the provision requiring submission to arbitration for “any dispute arising
8 between the parties,” then the provision is void and unenforceable. NRS 597.995(2) (2013).

9 Here, the subject Arbitration Agreement is void and unenforceable under NRS 597.995
10 because it does not include a specific authorization for its provision requiring all disputes be
11 submitted to arbitration. In relevant part, Provision (2) of the Arbitration Agreement states “[a]ny
12 controversy, dispute or disagreement, whether sounding in tort or contract to law, arising out of or
13 relating to this Agreement . . . shall be settled exclusively by binding arbitration.” However, absent
14 from Provision (2) is any signature line, initial line, or otherwise that indicates Plaintiff Corinne
15 DiLeo, as Decedent’s power of attorney, affirmatively agreed to submit to arbitration “any
16 controversy, dispute or disagreement” relating to the Arbitration Agreement. Rather, the
17 Arbitration Agreement only includes a sole signature line at the bottom of the page wherein
18 Plaintiff Corinne R. DiLeo generally acknowledges all of the listed provisions. Thus, the
19 Arbitration Agreement is void and unenforceable because Plaintiff Corinne DiLeo, as Decedent’s
20 Power of Attorney, did not specifically authorize Provision (2).

21 ///

22 ///

23 ///

24 _____
25 ⁵ This statute was enacted in 2013 and amended in June 2019. Given the subject events occurred in 2017, the 2013 version of the statute applies.

B. Defendants' Motion to Compel Arbitration should be denied because Defendants have not met their burden of proving a valid arbitration agreement exists.

NRS 38.221 provides that if a party requests a court to compel arbitration pursuant to a written agreement to arbitrate, and the opposing party denies the existence of such an agreement, the court shall summarily determine the issue. "If the court finds that there is no enforceable agreement, it may not . . . order the parties to arbitrate." NRS 38.221(3). The moving defendants, therefore, have the burden of showing that a binding arbitration agreement exists. *Obstetrics and Gynecologists v. Pepper*, 101 Nev. 105, 107, 693 P.2d 1259, 1261 (1985). Arbitration is a matter of contract, and "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Truck Ins. Exch. v. Swanson*, 124 Nev. 629, 634, 189 P.3d 656 (2008). The question of whether an agreement to arbitrate exists is one of fact, such that the district court's findings are given significant deference and reviewed under the clearly erroneous standard. *Id.* at 633, 189 P.3d at 659. Here...

1. Defendants have not met their burden of proving a valid arbitration agreement exists because Defendants failed to sign purported Arbitration Agreement and failed to show they were parties to the Agreement.

An arbitration agreement is subject to the same rules of construction as any other contract. *Kindred v. Second Judicial Dist. Court ex rel. Cty. of Washoe*, 116 Nev. 405, 410, 996 P.2d 903, 907 (2000). For any contract, the parties' consent is a basic element. *See Back Streets, Inc. v. Campbell*, 95 Nev. 651, 652, 601 P.2d 54, 55 (1979) ("A contract is founded upon the meeting of the minds of the parties as to ascertainable terms."). In addition, the parties' consent must be communicated to one another. *Alter v. Resort Properties of Am.*, 2014 WL 2466282, at *2 (Nev. May 30, 2014) ("Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties."). Thus, consent is essential to the contractual underpinning of an arbitration procedure; the asserted absence of contractual consent renders arbitration, by its very definition, inapplicable to resolve the issue. *See id.*; *Toal v. Tardif*, 178 Cal.

1 App. 4th 1208, 1221, 101 Cal. Rptr. 3d 97, 106–07 (2009); *see also Truck Ins. Exch.*, 124 Nev. at
2 633–34, 189 P.3d at 659 (holding arbitration agreement was invalid as to law firm because the law
3 firm was not a signatory to any of the arbitration agreements).

4 Here, the Arbitration Agreement is invalid because Defendants cannot demonstrate that
5 Decedent (i.e. Corinne DiLeo as power of attorney) and Defendants mutually assented to the
6 subject Arbitration Agreement. Like *Truck Ins. Exch.*, none of the Defendants or their
7 representatives are signatories to the Arbitration Agreement. In fact, there is absolutely no mention
8 of any of the Defendants or their representatives in the Arbitration Agreement. Accordingly, the
9 Arbitration Agreement is invalid and unenforceable because Defendants cannot satisfy their
10 burden of proving they are parties and signatories to the Arbitration Agreement.

11 **2. Defendants have not met their burden of proving a valid arbitration**
12 **agreement exists because Defendants cannot bind Plaintiffs to the terms**
13 **of the Arbitration Agreement.**

14 “Generally, arbitration is a matter of contract and a party cannot be required to submit to
15 arbitration any dispute which he has not agreed so to submit.” *Truck Ins. Exch.*, 124 Nev. at 634,
16 189 P.3d at 660; *see also Goliger v. AMS Properties, Inc.*, 123 Cal. App. 4th 374, 378, 19 Cal.
17 Rptr. 3d 819, 821 (2004) (holding daughter who signed arbitration agreement was not bound to
18 arbitration of her own claim for wrongful death of her mother against the defendant because she
19 did not sign the arbitration agreement “in her personal capacity.”). Only under the following
20 limited theories may a nonsignatory be bound to an arbitration agreement: (1) incorporation by
21 reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; or (5) estoppel. *Truck Ins. Exch.*,
124 Nev. at 634–35, 189 P.3d at 660.

22 Here, Plaintiffs cannot be bound to the Arbitration Agreement because they did not sign
23 the Arbitration Agreement, nor are they incorporated by reference. Like *Goliger*, here, none of the
24 Plaintiffs signed the Arbitration Agreement in their personal capacity; recall, Plaintiff Corinne
25 DiLeo only signed the Arbitration Agreement as Decedent’s power of attorney. Moreover, none

1 of the theories for binding a nonsignatory, which are outlined in *Truck Ins. Exch.*, are applicable
2 to the instant matter. If Defendants wanted to bind individuals such as Plaintiffs, then they should
3 have included a provision in their Arbitration Agreement stating the Agreement would apply to
4 Decedent's successors, spouses, children, assigns, agents, heirs, estate executors, etc.

5 **II. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully request the Court deny Defendants' Motion
7 to Compel Arbitration.

8 Dated this 24th day of September, 2019.

9 COGBURN LAW

10
11 By: /s/Hunter S. Davidson
12 Jamie S. Cogburn, Esq.
13 Nevada Bar No. 8409
14 Hunter S. Davidson, Esq.
15 Nevada Bar No. 14860
16 2580 St. Rose Parkway, Suite 330
17 Henderson, Nevada 89074
18 *Attorneys for Plaintiff*
19
20
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22
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25

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS MAIDE, L.L.C. D/B/A GENTLE SPRING CARE HOME'S, SOKHENA K. HUCH'S, AND MIKI N. TON'S MOTION TO COMPEL ARBITRATION** was submitted electronically for service only with the Eighth Judicial District Court on the 24th day of September, 2019.

I further certify that I served a true and correct copy of the foregoing document as follows:

☒ Pursuant to NEFCR 9 & EDCR 8.05(a), electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

John Orr, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118
Attorney for Defendants

/s/Monika Nawrot
An employee of Cogburn Law

Exhibit 1

Fields marked with asterisk (*) are required

- **Health facilities:** includes 40 types of medical, nonmedical and mental health-related business entities [FINDAHEALTHFACILITY.NV.GOV](https://findahealthfacility.nv.gov)
- **Child care facilities** [FINDCHILDCARE.NV.GOV](https://findchildcare.nv.gov)
 - Child care staff [FINDCHILDCARE.NV.GOV](https://findchildcare.nv.gov)
- **Medical Laboratories**
 - Medical Laboratory Personnel
- **Dietitians**
 - Music therapists
- **Environmental Health Section**
 - Kitchen, pool, and spa inside Health Facilities

If you only have a partial name of a facility/personnel or having troubles finding the facility by name, put the % sign before and after the partial wording% and all those with that word will appear, for example, %west%.

Business Unit *	<div>Health Facilities ▾</div>	Entity Type	<div>Agency ▾</div>
Facility Name	<div>bella estate</div>		
Credential Number	<div></div>	Credential Type	<div>All ▾</div>
(+) Address Information (+) Additional Information			

Licensee Log-In

Name ▲	Credential Type	Credential Number	Status	Expiration Date	Disciplinary Action	Address	Phone#	First Issue Date	Primary Contact Name	Primary Contact Role	Bed Count	Action
BELLA ESTATE CARE HOME	RESIDENTIAL FACILITY FOR GROUPS	7555-AGC-9	Active	12/31/2019	N/A	3140 COACHLIGHT CIRCLE LAS VEGAS NV 89117	702-2 20-42 81	04/22/2013	SUSAN SOWERS	Administrator	10	View Detail

1-1 of 1 records

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Laboratories
(program info and
complaint filing)

□ □ □ □ □

Childcare
Licensing
(program info and
complaint filing)

Environmental Health
Section

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Dietitians
Music Therapists
(program info and
complaint filing)

Exhibit 2

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED C 05/15/2014
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 000	<p>Initial Comments</p> <p>This Statement of Deficiencies was generated as a result of a State Licensure complaint investigation conducted at your facility on 5/15/14 in accordance with Nevada Administrative Code (NAC) 449, Residential Facility for Groups.</p> <p>The census at the time of the investigation was eight.</p> <p>Complaint #NV00039258 - The allegation regarding a caregiver working without a background check clearance was not substantiated through employee record review.</p> <p>#NV39258: The complaint investigative process was initiated by the Bureau of Health Care Quality and Compliance on 5/15/14.</p> <p>The investigation included:</p> <p>Review of three employee records including the criminal background checks. Record review revealed the criminal background checks for both caregivers were conducted according to NAC 449.123 requirements. Both State and FBI search results were negative.</p> <p>The findings and conclusions of any investigation by the Nevada Division of Public and Behavioral Health shall not be construed as prohibiting any criminal or civil investigations, actions, or other claims for relief that may be available to any party under applicable federal, state, or local laws.</p>	Y 000		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Exhibit 3

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 000	<p>Initial Comments</p> <p>AMENDED STATEMENT OF DEFICIENCIES</p> <p>This Statement of Deficiencies was generated as a result of an annual State Licensure survey and complaint investigation conducted in your facility on 4/1/15. This State Licensure survey was conducted by the authority of NRS 449.0307, Powers of the Division of Public and Behavioral Health.</p> <p>The facility is licensed for ten Residential Facility for Group beds for elderly and disabled persons and/or persons with mental illnesses and/or persons with chronic illnesses, five being Category I and five being Category II residents. The census at the time of the survey was ten. Ten resident files were reviewed and four employee files were reviewed. Complaint # NV00042345 was investigated during the survey.</p> <p>The complaint investigative process was initiated by the Division of Public and Behavioral Health on 4/1/15.</p> <p>Complaint #NV00042345 - The complaint contained one allegation. The complaint could not be substantiated.</p> <p>Allegation #1: Physical Environment - Safe environment not provided. A resident was living in the garage. The allegation could not be substantiated.</p> <p>The investigation for the allegation included:</p> <ul style="list-style-type: none"> -Observation of the facility revealed each of the ten residents had their own bed in either a shared room or an individual room inside of the facility. -Review of the caregiver schedule for the facility 	Y 000		

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LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

04/22/15

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
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Y 000	Continued From page 1 revealed Employee #1 was scheduled as a 24 hour caregiver. - Interviews were conducted with two residents, two employees, and the Administrator which revealed Employee #1 was the individual who resided in the room in the garage. The findings and conclusions of any investigation by the Division of Public and Behavioral Health shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state, or local laws. The facility received a grade of D. The following deficiencies were identified:	Y 000		
Y 050 SS=F	449.194(1) Administrator's Responsibilities-Oversight NAC 449.194 Responsibilities of administrator. The administrator of a residential facility shall: 1. Provide oversight and direction for the members of the staff of the facility as necessary to ensure that residents receive needed services and protective supervision and that the facility is in compliance with the requirements of NAC 449.156 to 449.27706, inclusive, and chapter 449 of NRS. This Regulation is not met as evidenced by: Based on observation, record review and interview, the administrator failed to provide oversight and direction to the staff to ensure 10 of 10 residents received the needed services and	Y 050		

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If continuation sheet 2 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
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Y 050	Continued From page 2 protective supervision they required. Evidenced by citations Y431, Y871, Y878, Y885, Y886, Y895, Y920, Y923, Y930, and Y936. Severity: 2 Scope: 3	Y 050		
Y 431	449.229(2) State Fire Marshall referral NAC 449.229 Requirements and precautions regarding safety from fire. 2. The Bureau shall notify the State Fire Marshal or the appropriate local government, as applicable, if, during an inspection of a residential facility, the Bureau knows of or suspects the presence of a violation of a regulation of the State Fire Marshal or a local ordinance relating to safety from fire. This Regulation is not met as evidenced by: Based on observation and interview, the facility failed to ensure 3 of 3 facility fire extinguishers were inspected annually. - State Fire Marshall referral Findings include: On 4/1/15 during a facility tour, three fire extinguishers were observed with a last service date for inspection and certification of 1/6/14. The extinguishers were located in the kitchen, in the hallway, and by the front door. On 4/1/15 at 5:05 PM, the Administrator acknowledged the service dates punched on the fire extinguisher tags.	Y 431		

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If continuation sheet 3 of 24

Division of Public and Behavioral Health

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Y 871	Continued From page 3	Y 871		
Y 871 SS=F	<p>NAC 449.2742(1)(d)(1-8)(1)(e) Medication Plan</p> <p>NAC 449.2742 Administration of medication: Responsibilities of administrator, caregivers and employees of facility.</p> <p>1. The administrator of a residential facility that provides assistance to residents in the administration of medications shall: d) Develop and maintain a plan for managing the administration of medications at the residential facility, including, without limitation:</p> <p>(1) Preventing the use of outdated, damaged or contaminated medications;</p> <p>(2) Managing the medications for each resident in a manner which ensures that any prescription medications, over-the-counter medications and nutritional supplements are ordered, filled and refilled in a timely manner to avoid missed dosages;</p> <p>(3) Verifying that orders for medications have been accurately transcribed in the record of the medication administered to each resident in accordance with NAC 449.2744;</p> <p>(4) Monitoring the administration of medications and the effective use of the records of the medication administered to each resident;</p> <p>(5) Ensuring that each caregiver who administers a medication is in compliance with the requirements of subsection 6 of NRS 449.037 and NAC 449.196;</p> <p>(6) Ensuring that each caregiver who administers a medication is adequately supervised;</p> <p>(7) Communicating routinely with the prescribing physician or other physician of the resident concerning issues or observations relating to the administration of the medication;</p>	Y 871		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
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Y 871	<p>Continued From page 4</p> <p>and</p> <p>(8) Maintaining reference materials relating to medications at the residential facility, including, without limitation, a current drug guide or medication handbook, which must not be more than 2 years old or providing access to websites on the Internet which provide reliable information concerning medications.</p> <p>(e) Develop and maintain a training program for caregivers of the residential facility who administer medication to residents, including, without limitation, an initial orientation on the plan for managing medications at the facility for each new caregiver and an annual training update on the plan. The administrator shall maintain documentation concerning the provision of the training program and the attendance of caregivers.</p> <p>This Regulation is not met as evidenced by: Based on record review, the administrator failed to ensure the facility's medication administration plan was followed.</p> <p>Findings include:</p> <p>On 4/3/15, a review of the facility's Medication Plan (undated), read as follows:</p> <p>Prevent the use of outdated, damaged or contaminated medications, Page 1, Section 1:</p> <p>-Bullet point #4: "Damaged, contaminated,</p>	Y 871		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
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Y 871	<p>Continued From page 5</p> <p>discontinued medications will be destroyed according to medication Destruction Instruction [see Subsection 1]."</p> <p>Bullet point #7: "Upon moving out of the facility, all resident's medications will be transfer along with the resident."</p> <p>Bullet point #8: "All resident's medications will be destroyed according to Medication Destruction Instruction upon resident deceased."</p> <p>Medication Destruction Instruction, Page 1, Section 1, Subsection 1:</p> <p>Bullet point #1: "Medications that need to be destroyed shall be placed in an empty bottle, filled the bottle with either coffee or bleach, and shook to dissolved, and then discarded in the trash bin outside."</p> <p>Each resident's prescription medications and any over-the-counter drugs and supplements ordered for the resident are filled and refilled in a timely manner to avoid missed dosages; Medication procedures for all residents, Page 1, Section 2:</p> <p>Bullet point #1: "All new residents' medications must be in theirs original containers, original bubble packs, and original format."</p> <p>Bullet point #3: "Staff will make sure the resident have medication orders for all the medications. Make sure there are refills noted on the medication container or order. If not, the physician will have to be called to get a new order or setup a physician's visit."</p>	Y 871		

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If continuation sheet 6 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
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Y 871	<p>Continued From page 6</p> <p>Bullet point #4: "Staff will ensure OTCs are labeled with the resident's name and prescribing physician name. If no physician's order for OTC, contact the physician's office."</p> <p>Bullet point #5: "Staff will add all prescribed medications, PRNs and OTC medication with physician's orders to the medication administration record (MAR)."</p> <p>Bullet point #6: "Staff will store all resident medications in a secured area or container and locked medicine cabinet."</p> <p>Bullet point #7: "The house manager or the assigned staff in charge is responsible for monitoring the status of all the residents' medications and the need to order refills."</p> <p>Bullet point #8: "One week prior to the last dose is given, a refill order will be called into the pharmacy, filling party such as the VA, or a reminder call to responsible resident's family member."</p> <p>Bullet point #9: "The facility's administrator will be notified a day prior to the last dose is given. The administrator will ensure the availability of the medicine to the resident."</p> <p>Bullet point #10: "Upon medications arrival to the facility, the Med Tech will be responsible for logging the MARs and ensuring the accuracy between the physician's order, the medication bottle's label, the medication and the MARs."</p> <p>Verification that medication orders have been accurately transcribed to Medication Administration records (MAR), Page 2, Section 3:</p>	Y 871		

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If continuation sheet 7 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
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Y 871	<p>Continued From page 7</p> <p>Bullet point #1: "The Med Tech is responsible for transcribing medication orders onto the medication administration records (MARs) each month and anytime there is a change to the resident's medication regiments."</p> <p>Bullet point #2: "The Med Tech will make sure the dosage matches with the physician's order and also the time and amount to be taken is recorded accurately."</p> <p>Monitoring of medication administration and the effective use of the MARs for documentation, Page 2, Section 4:</p> <p>Bullet point #2: "The administrator is responsible for reviewing the MARs documented by Med Tech on a monthly basis."</p> <p>Staff who is responsible for administering medications is adequately supervised, Page 2, Section 6:</p> <p>Bullet point #1: "The administrator and/or house manager is responsible for the oversight of medication administration staff."</p> <p>Bullet point #2: "The administrator will observe in person how the medication is being administered."</p> <p>Routine communication of issues or observations related to the medication administration to the prescribing physician or other physician's; and, Page 3, Section 7:</p>	Y 871		

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If continuation sheet 8 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
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Y 871	Continued From page 8 Bullet point #1: "The facility will communicate with resident physicians, if needed, through fax and/or by telephone." Bullet point #3: "The facility will inform the resident's physician when a resident misses or refuses to take his or her medication through fax or telephone." On 4/1/15, a review of residents' medications on-site, medication administration records and physician orders was conducted. Deficiencies cited may have been prevented had the facility adhered to it's medication management plan. Please see Tags Y885, Y886, Y895, Y920 and Y923. Severity: 2 Scope: 3	Y 871		
Y 878 SS=E	NAC 449.2742(5)(6) Medication / OTCs, Supplements, Change Order NAC 449.2742 Administration of medication: Responsibilities of administrator, caregivers and employees of facility. 5. An over-the-counter medication or a dietary supplement may be given to a resident only if the resident's physician has approved the administration of the medication or supplement in writing or the facility is ordered to do so by another physician. The over-the-counter medication or dietary supplement must be administered in accordance with the written instructions of the physician. The administration of over-the-counter medications and dietary supplements must be included in the record required pursuant to paragraph (b) of subsection	Y 878		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
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Y 878	<p>Continued From page 9</p> <p>1 of NAC 449.2744.</p> <p>6. Except as otherwise provided in this subsection, a medication prescribed by a physician must be administered as prescribed by the physician. If a physician orders a change in the amount or times medication is to be administered to a resident:</p> <p>(a) The caregiver responsible for assisting in the administration of the medication shall:</p> <p>(1) Comply with the order;</p> <p>(2) Indicate on the container of the medication that a change has occurred; and</p> <p>(3) Note the change in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744;</p> <p>(b) Within 5 days after the change is ordered, a copy of the order or prescription signed by the physician must be included in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744; and</p> <p>(c) If the label prepared by a pharmacist does not match the order or prescription written by a physician, the physician, registered nurse or pharmacist must interpret that order or prescription and, within 5 days after the change is ordered, the interpretation must be included in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744.</p> <p>This Regulation is not met as evidenced by: Based on observation, record review and interview, the facility failed to ensure 4 of 10 residents received medications as prescribed per physician order (Residents #2, #5, #6 and #9). The facility failed to ensure 1 of 10 residents' medications received a change order indication on the medication container after a physician changed the existing medication order (Resident</p>	Y 878		

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If continuation sheet 10 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
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Y 878	<p>Continued From page 10</p> <p>#10). The facility failed to ensure 3 of 10 residents' records had physician orders for medications (Residents #5, #6 and #9).</p> <p>Findings include:</p> <p>Resident #2: Physician order read: Albuterol 2.5 milligrams (mg)/3 mL (milliliters) (0.083%) inhalation solution, 3 mL nebulizer every 4 hours as needed for shortness of breath or wheezing. The medication was not on-site. On 4/1/15 at 3:45 PM, Employees #1 and #2 explained they did not know about the medication order. On 4/1/15 at 3:57 PM, Resident #2 explained they were not aware the medication had been ordered by the physician.</p> <p>Resident #5: Review of the MAR, medications on-site and physician orders revealed the following:</p> <p>-Cranberry 425 milligrams (mg), take 2 capsules (850 mg) by mouth every day. The medication was signed as administered on 4/1/15 at 8:00 AM. The medication was not on-site. On the March, 2015 MAR, the medication was listed on the MAR, crossed out, and a note indicated "Double Entry, page 2". A physician order was found in the record dated 10/21/14, with no order to discontinue the medication.</p> <p>-Cranberry 200 mg, take 2 capsules (400 mg) by mouth twice daily. The medication was not signed as administered for the 4/1/15, 8:00 AM dose. Two bottles of the medication were on-site. No physician order was found in the record.</p> <p>-Hydrocodone/APAP 5-325 mg, take 1 tablet by mouth three times daily as needed for pain. The medication was on-site. No physician order or</p>	Y 878		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 878	<p>Continued From page 11</p> <p>discontinue order was found in the record for this frequency. Hydrocodone/APAP 5-325 mg, take 1 tablet by mouth twice daily. The medication was on-site. A physician order dated 2/24/15 was found in the record.</p> <p>Resident #6: Review of the March and April 2015 MARs revealed the following medication was not listed on the MARs: DocQLace 100 mg, take 1 capsule by mouth every day. Prescription was filled on 3/20/15. The physician order was dated 4/1/15. No other order for the medication was found in the record. The medication was not administered as prescribed.</p> <p>Resident #9: Review of the MAR, medications on-site, and physician orders revealed the following:</p> <ul style="list-style-type: none"> - Potassium Chloride 10 MEQ ER, take 1 capsule by mouth daily. The medication was listed on the April 2015 MAR, and was signed as administered on 4/1/15. The medication was not listed on the March 2015 MAR. The medication was on-site and was filled on 3/25/15. No physician order was found in the record. - Also listed on the April 2015 MAR was Pot CL Micro Tab 10 MEQ ER, take 1 tablet by mouth every day. The medication was signed as administered on 4/1/15. The medication was not listed on the March 2015 MAR. The medication was on-site and was filled on 3/3/15. A physician order for 3/3/15 was found in the record. <p>Resident #10: The MAR and physician order read: Hydrocodone/APAP 5-325 mg, take 2</p>	Y 878		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 878	Continued From page 12 tablets by mouth three times daily as needed for pain. The medication on-site read: Hydrocodone/APAP 5-325 mg, take 2 tablets by mouth every six hours as needed for pain. There was no change order label on the medication container. Severity: 2 Scope: 2	Y 878		
Y 885 SS=D	449.2742(9) Medication / Destruction NAC 449.2742 Administration of medication: Responsibilities of administrator, caregivers and employees of facility. 9. If the medication of a resident is discontinued, the expiration date of the medication of a resident has passed, or a resident who has been discharged from the facility does not claim the medication, an employee of a residential facility shall destroy the medication, by an acceptable method of destruction, in the presence of a witness and note the destruction of the medication in the record maintained pursuant to NAC 449.2744. This Regulation is not met as evidenced by: Based on observation and interview, the facility failed to destroy medications after they were discontinued, had expired or after a resident had been discharged. for 3 of 12 residents (Resident #9 - sampled resident and Residents #11 and #12 - unsampled residents).	Y 885		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 885	Continued From page 13 Findings include: On 4/1/15, a review of resident medications revealed the following: Resident #9: One bottle of Vitamin B-12 , discontinued by the resident's physician on 2/24/15, was still on-site. Resident #11 - One bottle of Vitamin B-12, prescribed for a resident who had been discharged from the facility, was still on-site. Resident #12 - Nine Mediclophan suppositories, prescribed for a resident who had been discharged from the facility, were still on-site. On 4/1/15 at 5:05 PM, the Administrator acknowledged the medications should have been destroyed. Severity: 2 Scope: 1	Y 885		
Y 895 SS=B	449.2744(1)(b 1-4)+449.2746(2) Medication / MAR-PRN MAR NAC 449.2744 Administration of medication: Maintenance and contents of logs and records. 1. The administrator of a residential facility that provides assistance to residents in the administration of medication shall maintain: (b) A record of the medication administered to each resident. The record must include:	Y 895		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 895	<p>Continued From page 14</p> <p>(1) The type of medication administered; (2) The date and time that the medication was administered; (3) The date and time that a resident refuses, or otherwise misses, an administration of medication; and (4) Instructions for administering the medication to the resident that reflect each current order or prescription of the resident's physician.</p> <p>NAC 449.2746 (Refer to NAC 449.2742(5) The administration of over-the-counter medications and dietary supplements must be included in the record required pursuant to paragraph (b) of subsection 1 of NAC 449.2744.)</p> <p>2. A caregiver who administers medication to a resident as needed shall record the following information concerning the administration of the medication:</p> <p>(a) The reason for the administration; (b) The date and time of the administration; (c) The dose administered; (d) The results of the administration of the medication; (e) The initials of the caregiver; and (f) Instructions for administering the medication to the resident that reflect each current order or prescription of the resident's physician.</p> <p>This Regulation is not met as evidenced by: Based on record review and interview, the facility failed to ensure the medication administration record (MAR) was accurate for 5 of 10 MARs that were inspected (Residents #3, #5, #6, #9 and #10).</p> <p>Findings include:</p>	Y 895		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 895	<p>Continued From page 15</p> <p>Resident #3: Review of the MAR revealed the following medications were not signed as administered: -8:00 PM dose of Temazepam on 3/31/15 -12:00 AM (midnight) dose of Hydrocodone/APAP on 3/31/15 -PM dose of Mexiletine on 3/31/15</p> <p>On 4/1/15 at 2:25 PM, Resident #3 confirmed they received the medications.</p> <p>Resident #5: Review of the MAR revealed the following medications were not signed as administered: -8:00 PM dose of Trazadone on 3/31/15 -8:00 PM dose of Hydrocodone/APAP on 3/31/15</p> <p>Review of the MAR revealed the following medications were listed on the MAR twice: -Cranberry 425 milligrams (mg), take 2 capsules (850 mg) by mouth every day. The medication was signed as administered on 4/1/15 at 8:00 AM. The medication was not on-site. On the March, 2015 MAR, the medication was listed on the MAR, crossed out, and a note indicated "Double Entry, page 2". A physician order was found in the record dated 10/21/14, with no order to discontinue the medication.</p> <p>-Cranberry 200 mg, take 2 capsules (400 mg) by mouth twice daily. The medication was not signed as administered for the 4/1/15, 8:00 AM dose. Two bottles of the medication were on-site. No physician order was found in the record.</p>	Y 895		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 895	<p>Continued From page 16</p> <p>-Hydrocodone/APAP 5-325 mg, take 1 tablet by mouth twice daily for pain. The medication was not signed as administered for the 4/1/15, 8:00 AM dose. Physician order dated 2/24/15 was found in the record. The medication was on-site.</p> <p>-Hydrocodone/APAP 5-325 mg, take 1 tablet by mouth three times daily as needed for pain. No physician order or discontinue order was found in the record. The medication was on-site. No change order label was on the medication container.</p> <p>Resident #6: Review of the March and April 2015 MARs revealed the following medication was not listed on the MARs: -DocQLace 100 mg, take 1 capsule by mouth every day. The physician order was dated 4/1/15. Prescription was filled on 3/20/15. Medication was on sight.</p> <p>Resident #9: Review of the MAR revealed the following medication documentation discrepancies:</p> <p>- Alendronate 70 mg, take 1 tablet by mouth every Sunday a half hour prior to meal as directed. The medication was noted on the March 2015 MAR as discontinue on 3/3/15. The medication was still on-site.</p> <p>No discontinue order was found in the record. A hospice visit note from 3/3/15 indicated Alendronate 40 mg was discontinued on 3/3/15.</p> <p>- Methadone SOL 5 mg/5 ml, take 1 ml (1 mg) three times a day, routine for pain. The medication was not signed as administered for the 12:00 PM</p>	Y 895		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NV57555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 895	<p>Continued From page 17</p> <p>dose on 4/1/15. On 4/1/15 at 4:10 PM, Employee #2 explained they did administer the medication to the resident.</p> <p>- Non-Aspirin Acetamin 325 mg, take 2 tablets by mouth every 6 hours as needed for pain, headache, fever. The medication was listed on the April 2015 MAR. Physician order was found in the record. The medication was on-site. Also listed on the April 2015 MAR was Acetamin 325 mg, take 2 tablets by mouth three times a day as needed for pain. No change order label was on the medication container.</p> <p>- Morphine IR 20 mg/mL Soln, take 0.5 mg (10 mg) by mouth under the tongue every one hours as needed for pain or shortness of breath. The medication was not listed on the April 2015 MAR. Physician order dated 3/3/15 was found in the record. The medication was on-site.</p> <p>- Pot Chloride 10 MEQ ER, take 1 capsule by mouth daily. The medication was listed on the April 2015 MAR, and was signed as administered on 4/1/15. The medication was not listed on the March 2015 MAR. The medication was on-site and was filled on 3/25/15. Also listed on the April 2015 MAR was Pot CL Micro Tab 10 MEQ ER, take 1 tablet by mouth every day. The medication was signed as administered on 4/1/15. The medication was not listed on the March 2015 MAR. The medication was on-site and was filled.</p> <p>-Bisac-Evac suppositories 10 mg, unwrap and insert 1 suppository per rectum every day as needed if no bowel movement for 3 days. The medication was not listed on the April 2015 MAR.</p>	Y 895		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 895	Continued From page 18 Resident #10: Review of April 2015 MAR revealed the following medication was not listed on the MAR: Bisacodyl 10 mg suppositories, unwrap and insert 1 suppository rectally every day as needed for constipation. The physician order was dated 1/18/15. On 4/1/15 at 5:05 PM, the Administrator acknowledged the medication documentation errors. Severity: 2 Scope: 2	Y 895		
Y 920 SS=F	449.2748(1-2) Medication Storage NAC 449.2748 Medication: Storage; duties upon discharge, transfer and return of resident. 1. Medication, including, without limitation, any over-the-counter medication, stored at a residential facility must be stored in a locked area that is cool and dry. The caregivers employed by the facility shall ensure that any medication or medical or diagnostic equipment that may be misused or appropriated by a resident or any other unauthorized person is protected. Medication for external use only must be kept in a locked area separate from other medications. A resident who is capable of administering medication to himself without supervision may keep his medication in his room if the medication is kept in a locked container for which the facility has been provided a key.	Y 920		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 920	<p>Continued From page 19</p> <p>2. Medication stored in a refrigerator, including, without limitation, any over-the-counter medication must be kept in a locked box unless the refrigerator is locked or is located in a locked room.</p> <p>This Regulation is not met as evidenced by: Based on observation, record review and interview, the facility failed to ensure that medications were stored in a locked area.</p> <p>Findings include:</p> <p>On 4/1/15 during a facility tour in the afternoon, medications for all of the facility's residents were observed unsecured in the kitchen pantry. The pantry had a locking door, however the door was not locked. The key to the door was observed in an unlocked kitchen drawer next to the refrigerator.</p> <p>On 4/1/15 during a facility tour in the afternoon, the following unsecured medications were observed in the closet of Resident #6's room:</p> <ul style="list-style-type: none"> - One bottle of Vitamin B-12, prescribed for a resident who had been discharged from the facility. - One bottle of Vitamin B-12, prescribed for Resident #9, discontinued by the resident's physician on 2/24/15. - One large bottle of unlabeled Vitamin C. <p>On 4/1/15 at 1:15 PM, Employee #1 acknowledged the unlocked medications stored in the kitchen pantry. Employee #2 explained all of the unsecured medications found in Resident #6's room belonged to the employee.</p>	Y 920		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 920	Continued From page 20	Y 920		
Y 923 SS=D	<p>Severity: 2 Scope: 3</p> <p>449.2748(3)(a-b) Medication Container</p> <p>NAC 449.2748 Medication: Storage; duties upon discharge, transfer and return of resident.</p> <p>3. Medication including, without limitation, any over-the-counter-medication or dietary supplement, must be:</p> <p>(a) Plainly labeled as to its contents, the name of the resident for whom it is prescribed and the name of the prescribing physician; and</p> <p>(b) Kept in its original container until it is administered.</p> <p>This Regulation is not met as evidenced by: Based on observation, record review and interview, the facility failed to ensure medications were properly labeled and kept in the original containers for 1 of 10 residents (Resident #10).</p> <p>Findings include:</p> <p>On 4/1/15 during a review of resident medications, an unlabeled prescription bottle containing white pills was observed in Resident #10's medication bin. The white cap on the bottle was marked in pen with "ASA 81 milligrams (mg)".</p>	Y 923		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 923	Continued From page 21 On 4/1/15, review of Resident #10's medication administration record (MAR) revealed the resident was prescribed Aspirin 81 mg. On 4/1/15 at 3:45 PM, the Administrator acknowledged the medication was not properly labeled and the medication was not stored in its original container. Severity: 2 Scope: 1	Y 923		
Y 930 SS=C	449.2749(1)(a) Resident File-Storage, Res Information NAC 449.2749 Maintenance and contents of separate file for each resident; confidentiality of information. 1. A separate file must be maintained for each resident of a residential facility and retained for at least 5 years after he permanently leaves the facility. The file must be kept locked in a place that is resistant to fire and is protected against unauthorized use. The file must contain all records, letters, assessments, medical information and any other information related to the resident, including without limitation: (a) The full name, address, date of birth and social security number of the resident. This Regulation is not met as evidenced by: Based on observation and interview, the facility failed to ensure resident files were kept in a secured location for 10 of 10 residents (Residents #1, #2, #3, #4, #5, #6, #7, #8, #9 and #10).	Y 930		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 930	Continued From page 22 Findings include: On 4/1/15 during a facility tour in the afternoon, ten resident files were observed in an unlocked kitchen cabinet. On 4/1/15 at 2:45 PM, Employee #1 acknowledged the unlocked files. Severity: 1 Scope: 3	Y 930		
Y 936 SS=D	449.2749(1)(e) Resident file-NRS 441A Tuberculosis NAC 449.2749 Maintenance and contents of separate file for each resident; confidentiality of information. 1. A separate file must be maintained for each resident of a residential facility and retained for at least 5 years after he permanently leaves the facility. The file must be kept locked in a place that is resistant to fire and is protected against unauthorized use. The file must contain all records, letters, assessments, medical information and any other information related to the resident, including without limitation: (e) Evidence of compliance with the provisions of chapter 441A of NRS and the regulations adopted pursuant thereto. This Regulation is not met as evidenced by: Based on record review and interview, the facility failed to ensure 1 of 10 residents met the requirements concerning tuberculosis (TB) testing (Resident #10). Findings include:	Y 936		

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Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 936	<p>Continued From page 23</p> <p>On 4/1/15, a review of resident files revealed Resident #10 was admitted to the facility on 1/9/15. The file lacked documented evidence of a two-step TB test.</p> <p>On 4/1/15 at 5:05 PM, the Administrator acknowledged the missing TB test documentation</p> <p>This was a repeat deficiency from the 4/2/14 annual State Licensure grading survey.</p> <p>Severity: 2 Scope: 1</p>	Y 936		

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If continuation sheet 24 of 24

Exhibit 4

1 **BEFORE THE NEVADA STATE BOARD OF EXAMINERS**
2 **FOR LONG TERM CARE ADMINISTRATORS**
3

4 In the Matter of the Complaint for
5 Disciplinary Action Against

6 DANIELLE A. WALTON,

7 RESPONDENT

8 Residential Facility Administrator for

9 BELLA ESTATES CARE HOME
10 _____

Case No. B-36122

Filed: _____

Executive Director

11
12 **STIPULATION FOR SETTLEMENT OF DISCIPLINARY ACTIONS**

13 WHEREAS, as more fully addressed below, the NEVADA STATE BOARD OF
14 EXAMINERS OF LONG TERM CARE ADMINISTRATORS, ("BOARD"), and RESPONDENT
15 DANIELLE A. WALTON ("RESPONDENT" or "WALTON") (collectively referred to as "the
16 Parties"), hereby enter into this Stipulation for Settlement of Disciplinary Actions as follows:

17 **Jurisdiction**

- 18 1. Pursuant to Nevada Revised Statute 654.110(1)(f), the BOARD has jurisdiction to
19 receive, investigate and take appropriate action with respect to any charge or
20 complaint filed with the BOARD against a licensee.
21
22 2. RESPONDENT at all times relevant hereto, was and currently is, licensed in the
23 State of Nevada as a residential facility administrator ("RFA") by the BOARD,
24 pursuant to the provisions of Nevada Revised Statutes and Nevada Administrative
25 Code chapters 654.
26
27 3. At all times relevant hereto, RESPONDENT was the Administrator of BELLA
28 ESTATES CARE HOME, 3140 Coachlight Circle, Las Vegas, NV 89117 ("the

Facility”), License No. 9304, and as a result of such licensure, his/her conduct in the capacity of a licensee was and is governed by Nevada Revised Statutes Chapter 654, Nevada Administrative Code 654, and other provisions of Nevada law.

4. Pursuant to Nevada Revised Statute 233B.121(5), the BOARD is authorized to enter into a settlement agreement to resolve a disputed matter.

Allegations

5. On or about April 1, 2015 the State of Nevada, Division of Public and Behavioral Health (“DPBH”) conducted an annual State Licensure survey and complaint investigation at Bella Estate Care Home and subsequently DPBH issued its Statements of Deficiencies (“SOD”) against the Facility.
6. On or about June 19, 2015, the BOARD sent a “Notice Pursuant to Nevada Revised Statutes (“NRS”) 233B.127(3) of Intent to Take Administrative Action for Violations of Chapter 654 of NRS and Chapter 449 of NRS” to RESPONDENT, by certified mail, notifying him or her of an investigation concerning allegations of Chapter 654 violations.
7. On July 8, 2015, the Board sent correspondence to RESPONDENT, by certified mail, notifying RESPONDENT that sufficient evidence had been found for disciplinary action to be commenced, and that the BOARD proposed such action would be brought for an administrative hearing.
8. Respondent acknowledges that information has been received by the BOARD or its agent, which constitutes sufficient grounds for the initiation of an administrative hearing.
9. The Parties desire to resolve any disputed matters relating to the BOARD’S investigation, and recognize that continued litigation of this dispute would be protracted, costly and time consuming, and therefore, the Parties have reached a

settlement agreement in the interest of judicial and administrative economy.

Violations of Law

10. RESPONDENT admits that the conduct set forth in the DPBH survey and/or complaint investigation constitutes a violation of law regulating the practice of residential facility administrators and/or skilled nursing administrators. RESPONDENT has elected to enter into this settlement agreement rather than face the possibility of further disciplinary action by the BOARD.

Administrative Penalty

11. RESPONDENT shall maintain a grade of B or better for all of his/her facilities for the eighteen (18) months immediately following the Effective Date of the Board's Final order, and agrees that if licensee receives a grade below a B, his/her license shall be immediately suspended until he/she comes before the Board at the next Quarterly Board Meeting. Respondent shall also complete Modules 1 and 4 of the Nevada Best Practices Training to be provided by the Board and 8 hours of Medication Training within thirty (30) days after the Effective Date of the Board's Final Order, and pay the following monetary assessment to the BOARD:

Administrative Fine:	\$	3,000.00
Best Practices Training:		100.00
Administrative & Legal Costs:		<u>375.00</u>
Total Assessed:	\$	<u>3,475.00</u>

12. RESPONDENT shall pay to the BOARD the total sum of \$3,475.00, in twelve (12) installments consisting of the first payment being ten (10) percent of the total balance equaling \$347.48 and eleven (11) equal monthly installment payments \$284.32 thereafter.

- 1 13. The first payment of \$347.48 is due and payable within thirty (30) days after the
2 EFFECTIVE DATE of the BOARD'S Final Order, with eleven (11) additional
3 installment payments of \$284.32, each installment payment becoming due and
4 payable on the 15th day of each next succeeding month after the first payment, until
5 the total balance due is paid in full. No grace period will be permitted. Any
6 installment payment not actually received by the BOARD on or before its due date
7 shall be construed as an event of default of this agreement by the RESPONDENT.
8
- 9 14. Any installment payment not actually received by the BOARD on or before its due
10 date shall be subjected to a Fifty Dollar (\$50.00) late fee.
- 11 15. If monthly installments are not brought current within thirty (30) days of due date,
12 the remaining unpaid balance shall become immediately accelerated, and the total
13 remaining unpaid balance of the monetary assessments shall become immediately
14 due and payable in full. In such event, debt collection actions for unpaid monetary
15 assessments in this case may be instituted by the BOARD.
- 16 16. In the event of default, **RESPONDENT agrees that his/her license shall be**
17 **immediately suspended.** The suspension of RESPONDENT'S license shall
18 continue until the unpaid balance is paid in full.
- 19 17. RESPONDENT acknowledges that the BOARD has the legal power and authority to
20 take action against her/him, including instituting debt collection actions for unpaid
21 monetary assessments in this case.
- 22 18. RESPONDENT acknowledges that the BOARD will retain jurisdiction over this
23 matter until all terms and conditions set forth in this settlement agreement have
24 been met to the satisfaction of the BOARD.
- 25 19. The BOARD agrees not to pursue any other or greater remedies or fines in
26 connection RESPONDENT'S alleged conduct, and that once this agreement is fully
27
28

1 agreement, if after review by the BOARD, this settlement agreement is rejected.

2 31. If the BOARD does not accept the settlement agreement, it shall be regarded as
3 null and void. Admissions by RESPONDENT in the settlement agreement will not
4 be regarded as evidence against him at the subsequent disciplinary hearing. The
5 RESPONDENT will be free to defend himself and no inferences against him will be
6 made from his willingness to have entered into this agreement.

7
8 ...
9 ...
10 ...
11
12
13 **Complete Agreement**

14 32. This settlement agreement consists of eight pages and embodies the entire
15 agreement between the BOARD and RESPONDENT. It may not be altered,
16 amended or modified without the express consent of the parties.

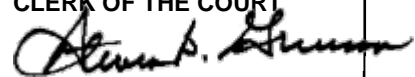
17 Date: 8/6/15

18 Date: _____
19 NEVADA STATE BOARD OF
20 EXAMINERS OF LONG TERM CARE
21 ADMINISTRATORS

22 By: 
23 Danielle A. Walton
24 Licensee

25 By: _____
26 Sandy Lampert
27 Executive Director
28

5



1 S. BRENT VOGEL

Nevada Bar No. 006858

2 Brent.Vogel@lewisbrisbois.com

JEFFREY H. BALLIN

3 Nevada Bar No. 004913

Jeffrey.ballin@lewisbrisbois.com

4 JOHN M. ORR

Nevada Bar No. 14251

5 John.Orr@lewisbrisbois.com

LEWIS BRISBOIS BISGAARD & SMITH LLP

6 6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

7 702.893.3383

FAX: 702.893.3789

8 *Attorneys for Defendants Maide, L.L.C, d/b/a Gentle Spring Care Home,*
9 *Sokhena K. Huch, and Miki Ton*

DISTRICT COURT

CLARK COUNTY, NEVADA

12 CORINNE R. DILEO as Special
13 Administrator for the ESTATE OF THOMAS
14 DILEO; THOMAS DILEO, JR., as Statutory
15 Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS

16 Plaintiffs,

17 vs.

18 MAIDE, L.L.C, a Nevada limited-liability
19 company d/b/a GENTLE SPRING CARE
20 HOME; SOKHENA K. HUCH, an individual;
21 MIKI N. TON, an individual; DOE
ENTITIES 11-10, inclusive; ROE
ENTITIES 11-20, inclusive,

22 Defendants.

CASE NO. A-19-797533-C

Dept. No.: 1

**MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
HOME; SOKHENA K. HUCH, an
individual; MIKI N. TON's REPLY IN
SUPPORT OF DEFENDANTS' MOTION
TO COMPEL ARBITRATION**

**HEARING DATE: 10/17/2019
IN CHAMBERS**

23 Defendants MAIDE, L.L.C, a Nevada limited-liability company d/b/a GENTLE SPRING
24 CARE HOME; SOKHENA K. HUCH, an individual; MIKI N. TON (collectively referred to as
25 "Defendants"), by and through their attorneys of record, S. Brent Vogel, Esq., Jeffrey H. Ballin,
26 Esq., and John M. Orr, Esq. of the Law Firm LEWIS BRISBOIS BISGAARD & SMITH, hereby
27 file this Reply in Support of Defendants' Motion to Compel Arbitration.

1 This Motion is based upon the papers and pleadings on file in this case, the attached
2 exhibits, the Memorandum of Points and Authorities submitted herewith, and any argument made
3 at the time of hearing in this matter.

4 DATED this 10th day of October, 2019.

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

8 By /s/ John M. Orr

S. BRENT VOGEL

Nevada Bar No. 6858

JOHN M. ORR

Nevada Bar No. 14251

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

*Attorneys for Defendants, The Heights of Summerlin,
LLC*

14
15 **MEMORANDUM OR POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 Plaintiffs' claims against Defendants are subject to binding arbitration in accordance with
18 the arbitration agreement (the "Agreement") that Corrine Dileo signed as the personal
19 representative of Thomas Dileo. Plaintiffs make three principle arguments against the
20 enforceability of the Agreement. First, Plaintiff argues that the Agreement is unenforceable
21 because it does not contain a specific authorization as required by NRS § 597.995(1). The
22 argument misstates facts. The Agreement is clearly labelled "Grievances and Arbitration" and is
23 set aside from the rest of the resident agreement on its own page. It also contains its own signature
24 line, which the Supreme Court of Nevada has held constitutes a "specific authorization" for
25 purposes of NRS § 597.995(1). *See Fa Hat, LLC v. DiTerlizzi*, No. 68479, 2016 Nev. Unpub.
26 LEXIS 762, at *4-*5 (Nev. Sept. 21, 2016). Ms. Dileo signed this Agreement on a separate
27 signature line, demonstrating her assent to the Agreement.

1 Second, Plaintiffs argue the Agreement is unenforceable because it incorrectly contains the
2 name of another residential group home owned by Maide, LLC, Bella Estate Care Home. Mr.
3 Dileo was a resident at Gentle Springs Care Home (“Gentle Spring”), not Bella Estate Care Home
4 (“Bella Estate”). Plaintiffs conveniently ignore, however, that Ms. Dileo was fully aware that her
5 agreement was with Gentle Spring based on the circumstances of the transaction and the obvious
6 fact that Mr. Dileo was a resident of Gentle Spring, not Bella Estate. Moreover, the Agreement did
7 not need to be signed by Defendants to be enforceable. In accordance with the plain language of
8 NRS § 597.995 and well-settled principles of contract law only, the Agreement only needed to
9 contain the signature of the person being compelled to arbitrate, i.e. Ms. Dileo.

10 Plaintiffs lastly argue that they cannot be compelled to arbitrate their claims because Ms.
11 Dileo only signed the Agreement in her representative capacity as Mr. Dileo’s power of attorney.
12 This argument disregards the nature of Plaintiffs’ claims. Plaintiffs have asserted claims for
13 negligence, elder abuse under NRS § 41.1395, and wrongful death under NRS § 48.105. As the
14 personal representative of Mr. Dileo’s Estate, Ms. Dileo “succeeds to the rights and obligations of
15 the Estate’s decedent, effectively stepping into the shoes of the decedent.” *Colo. Nat’l Bank of*
16 *Denver v. Friedman*, 846 P.2d 159, 163 (Colo. 1993). The heirs do not have standing to assert an
17 elder abuse or negligence claim. *Echevarria v. Echevarria*, No. 66618, 2015 WL 7431757 (Nov.
18 19, 2015) (“nothing in NRS 41.085 authorizes an heir to maintain an action for elder abuse or
19 neglect on behalf of a decedent.”). NRS 41.100(1) (“[e]xcept as otherwise provided in this section,
20 no cause of action is lost by reason of the death of any person, **but may be maintained by or**
21 **against the person’s executor or administrator.**” (emphasis added). These claims belong to Ms.
22 Dileo as the personal representative of Mr. Dileo’s estate. The Estate’s claims are unequivocally
23 subject to arbitration because Ms. Dileo is subject to Mr. Dileo’s contractual right and obligation.

24 With regard to the heirs’ wrongful death claim, this claim is subject to arbitration because
25 it is not severable from the Estate’s claims. It would be a waste of time, resources, and an affront
26 to judicial economy to try these claims in separate forums. NRS § 38.221(7). To any extent the
27 Court determines the heirs’ claims are severable, NRS § 38.221(7) requires the Court to stay
28 these claims during the pendency of the arbitration, given these claims all stem from a common

1 nucleus of operative facts. NRS § 38.221(7) (“If the court orders arbitration, the court on just
2 terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim
3 subject to the arbitration is severable, the court may limit the stay to that claim.”). For these
4 reasons, Defendants move this Court to dismiss Plaintiffs’ Complaint and refer this case to binding
5 arbitration.

6 **II. LEGAL ARGUMENT**

7 **A. The Agreement Complies with NRS § 597.995(1).**

8 NRS § 597.995(1) provides as follows:

9 1. Except as otherwise provided in subsection 3, an agreement
10 which includes a provision which requires a person to submit to
11 arbitration any dispute arising between the parties to the agreement
must include specific authorization for the provision which indicates
that the person has affirmatively agreed to the provision.

12 2. If an agreement includes a provision which requires a person to
13 submit to arbitration any dispute arising between the parties to the
14 agreement and the agreement fails to include the specific
15 authorization required pursuant to subsection 1, the provision is void
and unenforceable.

16 NRS § 597.995(1)–(2). In *Fat Hat*, the Supreme Court of Nevada considered what constitutes a
17 “specific authorization” under NRS § 597.995(1). *Fat Hat*, LLC (“*Fat Hat*”) was sued by several of
18 its employees after the employees discovered *Fat Hat* had been secretly filming them in their
19 dressing areas as they changed attire. *Fat Hat* moved to compel arbitration based on the arbitration
20 clauses in the plaintiffs’ independent contractor or employment contracts. The district court denied
21 this request, so *Fat Hat* appealed.

22 On appeal, each of the six employee plaintiffs argued that their arbitration agreements did
23 not comply with NRS § 597.995(1) because they did not contain a “specific authorization” for
24 arbitration. The court accepted this argument for four of the six employees. It reasoned

25
26 Though the arbitration provision immediately preceded the signature
27 line on the last page for all the contracts, that was a general
signature line indicating consent to all the terms of the contract.
28 Thus, those signatures do not qualify as specific authorizations for

1 the arbitration provision. Although Kirtz initialed at the bottom of
2 the page with the arbitration provision, she initialed at the bottom of
3 every page; thus, her initials fail to demonstrate that she
affirmatively agreed to the arbitration provision.

4 *Fat Hat*, 2016 Nev. Unpub. LEXIS 762, at *4. With regard to the other two employee plaintiffs,
5 the Court held they did specifically authorize arbitration because “[i]n addition to a signature line
6 at the end of the contracts, both Hebert and Mihaylova were required to fill in their names and
7 addresses in the blank spaces of the provision, explicitly stating that the agreement to arbitrate was
8 effective.” *Id.* at *4–*5. Based on this, the Court held these two contracts complied with NRS §
9 597.995(1).
10

11 In this case, Ms. Dileo initially signed a Resident Agreement that contained five pages
12 with a single signature block on page 5 that applied to the whole agreement. Resident Agreement,
13 attached hereto as **Exhibit “A.”** She then signed a separate “Resident Agreement Addendum” that
14 contained the subject arbitration clause. Resident Addendum, attached hereto as **Exhibit “B.”** This
15 Agreement contained its own signature line, and, just like the two employee contracts in *Fat Hat*,
16 Ms. Dileo was required to fill in her name, date, and her signature. Under *Fat Hat*, this constitutes
17 a specific authorization under NRS 597.995(1). Plaintiff incorrectly argues that the arbitration
18 agreement only includes “a sole signature line at the bottom of the page wherein Plaintiff Corinne
19 R. Dileo generally acknowledges all of the listed provisions.” Pltfs.’ *Oppo.* at 5. Plaintiffs’
20 ironically ignore that the arbitration and grievance clause is the only provision on the page and
21 contains a signature block separate and apart from the rest of the Resident Agreement. The Court’s
22 reasoning in *Fat Hat* suggests that NRS 597.995(1) is designed to ensure that signatories
23 specifically acknowledge an arbitration clause rather than agreeing to a myriad of contractual
24 provisions buried in the annals of an agreement with one sweeping authorization. This is not a
25 concern in this case. Ms. Dileo separately signed the Agreement separate and apart from the total
26 Resident Agreement. Her signature on the addendum reflects her specific acknowledgement and
27
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1 assent to the arbitration clause.

2 **B. The Agreement Is Valid and Enforceable**

3 Plaintiffs further suggest that the Agreement is not a valid contract because the letterhead
4 on the Agreement reads “Bella Estate Care Home,” rather than Gentle Spring Care Home.
5 Plaintiffs suggest that this does not sufficiently identify the parties to the Agreement and somehow
6 makes the Agreement invalid. This argument lacks any legal foundation. Indeed, Plaintiffs cite no
7 legal authority to support this flimsy argument. Both Bella Estate and Gentle Spring are residential
8 group homes owned and operated by Maide, LLC. Ton, M. Decl., attached hereto as **Exhibit “C.”**
9 “Although the party seeking to enforce an arbitration clause bears the burden of proving the
10 clause's valid existence, any party opposing arbitration must establish a defense to enforcement.”
11 *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004). Defendants have met
12 their burden of showing the arbitration clause is enforceable by producing a signed copy of the
13 original arbitration agreement. Plaintiffs do not dispute that Ms. Dileo signed this Agreement. The
14 Agreement otherwise satisfies Nevada’s statute of frauds because it contains the signature of the
15 party to be charged. Nevada courts follow the Restatement, which requires the contract to be
16 "signed by the party to be charged" and state "with reasonable certainty . . . each party to the
17 contract either by his own name, or by such a description as will serve to identify him." *Stanley v.*
18 *A. Levy & J. Zentner Co.*, 60 Nev. 432, 112 P.2d 1047, 1053 (Nev. 1941) (quoting Restatement
19 (First) of Contracts § 207 (1932)); (“In the following cases every agreement is void, unless the
20 agreement, or some note or memorandum thereof expressing the consideration, is in writing, and
21 subscribed by the person charged therewith...”); *Wiley v. Cook*, 94 Nev. 558, 563, 583 P.2d 1076,
22 1079 (1978)) (“A memorandum, in order to make enforceable within the Statute, any document or
23 writing, formal or informal, [s]igned by the party to be charged or by his agent actually or
24 apparently authorized thereunto.”).

25 To any extent the Agreement is ambiguous because it contains the name of Bella Estate,
26 rather than Gentle Spring, Nevada law permits parol evidence to clear up supplemental details of
27 an agreement. *See Butler v. Lovoll*, 96 Nev. 931, 620 P.2d 1251, 1253 (Nev. 1980). It is
28 disingenuous for Plaintiffs to suggest that they were not aware that the correct entity was Gentle

1 Spring. The circumstances of this transaction clearly demonstrate that both parties understood that
2 Mr. Dileo and Gentle Spring were parties to the Agreement. The fact Mr. Dileo was admitted into
3 Gentle Spring reflects this intent. Ms. Dileo has not asserted that she thought the Agreement was
4 with a different entity or that there was not otherwise mutual assent to the substance of the
5 Agreement. Plaintiffs' argument reflects a desperate attempt to capitalize on a cheap technicality,
6 rather than the true intent of the parties. *See Hilton Hotels Corp. v. Butch Lewis Productions*, 107
7 Nev. 226, 231–32, 808 P.2d 919, 922 (“the better approach is for the courts to examine the
8 circumstances surrounding the parties' agreement in order to determine the true mutual intentions
9 of the parties. Courts today tend to be willing to look beyond the written document to find the
10 “true understanding of the parties.”). Both Gentle Spring and Bella Estate are owned and operated
11 by Maide, LLC, Ex. C., so on a practical level, the Agreement identifies the correct party.

12 **C. Plaintiffs Are Bound to the Arbitration Agreement**

13 Plaintiffs' argument that Ms. Dileo is not bound to the Agreement misapprehends her role
14 as Mr. Dileo's personal representative and the nature of her claims. As Plaintiffs point out, they
15 have asserted claims for negligence, elder abuse under NRS § 41.1395, and for wrongful death
16 under NRS § 41.085.¹ The Nevada Supreme Court has specifically held that an heir does not have
17 standing to assert an elder abuse claim under NRS 41.085. *Echevarria v. Echevarria*, No. 66618,
18 2015 WL 7431757 (Nov. 19, 2015) (“nothing in NRS 41.085 authorizes an heir to maintain an
19 action for elder abuse or neglect on behalf of a decedent.”). NRS 41.100(1) provides: “[e]xcept as
20 otherwise provided in this section, no cause of action is lost by reason of the death of any person,
21 *but may be maintained by or against the person's executor or administrator.*” NRS 41.100(1)
22 (emphasis added). NRS § 41.085 allows the personal representative to maintain an action for
23 wrongful death and recover damages on behalf of the decedent. NRS § 41.085(5). The personal
24 representative of an Estate steps into the decedent's shoes and inherits the decedent's contractual
25

26
27 ¹ Plaintiffs claim they also asserted a survivor action under NRS 41.100. There is no distinct cause of action entitled a
28 survivor action. NRS 41.100 simply confers standing on a personal representative to assert claims on behalf of a
decedent.

1 rights, obligations, and causes of action. *Colo. Nat'l Bank of Denver v. Friedman*, 846 P.2d 159,
2 163 (Colo. 1993); *Farm Bureau Mut. Ins. Co. of Idaho v. Eisenman*, 286 P.3d 185, 189 (Id. 2012)
3 (“the personal representative “steps into the shoes” of the decedent to administer the estate, and
4 may sue on causes of action the decedent may have pursued, the personal representative may not
5 bring an action that abated upon the death of the decedent.’). Mr. Dileo’s heirs do not have
6 standing to assert a negligence or elder abuse claim against Defendants. Those claims belong to
7 Ms. Dileo as the Estate’s personal representative under NRS § 41.100. Given Ms. Dileo inherits
8 Mr. Dileo’s contractual rights and obligations, the Estate’s claims for elder abuse, negligence, and
9 wrongful death are subject to arbitration.

10 The heirs should also be compelled to arbitrate their wrongful death claim because it is not
11 severable from the Estate’s claims. NRS 38.221(7) provides: “If the court orders arbitration, the
12 court on just terms shall stay any judicial proceeding that involves a claim subject to the
13 arbitration. *If a claim subject to the arbitration is severable, the court may limit the stay to that*
14 *claim.*” NRS 38.221(7) (emphasis added). The heirs’ claims are not severable. Claims are
15 severable when they rest on different facts and legal theories. *Coutin v. Young & Rubicam Puerto*
16 *Rico, Inc.*, 124 F.3d 331, 339 (5th Cir. 1997) (“When different claims for relief are not
17 interconnected—that is, when the claims rest on different facts and legal theories—they are by
18 definition severable and unrelated.”); *Figueroa-Torres v. Toledo-Davila*, 232 F.3d 270, 278 (1st
19 Cir. 2000) (“We recently held that when different claims for relief are not interconnected that is,
20 when the claims rest on different facts and legal theories they are by definition severable and
21 unrelated.”) (internal alterations omitted). The heirs’ claims are based on Mr. Dileo’s residency at
22 Gentle Spring. It would waste the parties’ and this Court’s time and resources to essentially
23 litigate the same set of facts twice, and it hazards leading to inconsistent results. All claims will
24 require Plaintiffs to prove that Defendants breached the applicable standard of care and that those
25 breaches caused Mr. Dileo’s death or other injuries. These claims are so intertwined that it would
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1 be a waste of judicial resources and the parties' resources to litigate identical claims in two
2 forums. Moreover, the Supreme Court of Nevada has held that all doubts regarding the scope of an
3 arbitration agreement are resolved in favor of arbitration *Kindred v. 2nd Jud. Dist. Court*, 116
4 Nev. 405, 411, 996 P.2d at 907 ("in judging the scope of the arbitration agreements, we resolve
5 all doubts concerning the arbitrability of the subject matter of a dispute in favor of arbitration").
6

7 In the event the Court determines that the heirs' wrongful death claim is not subject to
8 arbitration, NRS 38.221(7) requires these claims to be stayed during the pendency of the
9 arbitration of the Estates' claims. NRS § 38.221(7) ("If the court orders arbitration, the court on
10 just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a
11 claim subject to the arbitration is severable, the court may limit the stay to that claim.").

12 III. CONCLUSION

13 Based upon the foregoing, Defendants respectfully request that this Honorable Court grant
14 Defendants' Motion to Compel Arbitration.

15 DATED this 10th day of October, 2019

16 LEWIS BRISBOIS BISGAARD & SMITH LLP

17
18
19 By /s/ John M. Orr

20 S. BRENT VOGEL

21 Nevada Bar No. 006858

22 JOHN M. ORR

23 Nevada Bar No. 14251

24 6385 S. Rainbow Boulevard, Suite 600

25 Las Vegas, Nevada 89118

26 Tel. 702.893.3383

27 *Attorneys for Defendant The Heights of*
28 *Summerlin, LLC*

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 10th day of October, 2019, a true and correct copy
3 of MAIDE, L.L.C, a Nevada limited-liability company d/b/a GENTLE SPRING CARE
4 HOME; SOKHENA K. HUCH, an individual; MIKI N. TON's REPLY IN SUPPORT OF
5 DEFENDANTS' MOTION TO COMPEL ARBITRATION was served by electronically
6 filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all
7 parties with an email-address on record, who have agreed to receive Electronic Service in this
8 action.

9 Jamie S. Cogburn, Esq.
10 Hunter S. Davidson, Esq.
11 COGBURN LAW OFFICES
12 2580 St. Rose Parkway, Suite 330
13 Henderson, NV 89074
14 Tel: 702.748.7777
15 Fax: 702.966.3880
16 *Attorneys for Plaintiffs*

17 By /s/ Roya Rokni
18 an Employee of
19 LEWIS BRISBOIS BISGAARD & SMITH LLP
20
21
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23
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25
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27
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EXHIBIT ‘A’

ADMISSION AGREEMENT

This is a adult group care Facility licensed by the Bureau of Licensure and Certification.

Facility shall provide the following basic services:

Thomas Dileo 052 28 4390 8/15/2034
Name of Resident Social Security # Date of Birth

1) ADMISSIONS:

- a) Admissions to this facility are accorded to residents without discrimination because of race, creed, color, religion, or national origin.
- b) It is hereby understood and agreed upon that the resident's age, pre-admission appraisal information, emergency information, financial information, health history, physician's report, and any other misrepresentation or omission by the resident or responsible party shall render this agreement voidable at the option of the facility, with appropriate notice. In any time, the facility may request an updated copy of the above forms. The facility maintains the right to legal recourse for damages to misrepresentation during admission.

2) BASIC GENERAL SERVICES:

- a) Room: Private ☒ Semi-Private ☐
- b) Food Service: Three Nutritious meals daily. We have snack available for all residents but we serve formal setting snack in the afternoon only. Snacks maybe limited as per diet requirement of the individual. A fruit tray is available in the counter for anyone anytime during the day.

- c) Laundry Service: Facility is not responsible for dry cleaning & any other special laundering needs of the resident.
- d) Cleaning of the resident's room.
- e) Comfortable twin size bed. Linens changed bi-weekly or as often as needed.
- f) Bedside care for minor temporary illnesses.
- g) The facility will not be responsible for any cash resources and other belongings not entrusted to the facility. At the time of admission, facility shall provide Theft & Loss Policy.
- h) The facility maintains to contact the resident physician or in his absence an alternate physician or the paramedics at the expense of the resident. All expenses incurred shall be the resident's responsibility.
- i) If the resident becomes afflicted with a contagious disease or sustained an illness that would jeopardize the safety & health of the residents and the facility, or for which the facility is not allowed to provide care, the facility shall have the authority to relocate the resident to a hospital or an appropriate placement for such care at the expense of the resident or the resident's representative.

3) ACCOMMODATIONS:

- a) Furnishings such as twin size bed, dresser drawer, small chair and night stand shall be provided by the facility. The resident is permitted to personalize their individual accommodations by decorating and providing their own furnishings
- b) The resident agrees not to change the lock of said premises without prior consent of the facility.

4) OPTIONAL SERVICES: Other optional services may be agreed upon. The family shall be responsible for the payment of optional services.

- a) Cable TV.
- b) Incontinence & Skin Care Supplies (diapers, bed pads, creams, etc)
- c) First Aid Supplies – Minor wound creams, etc
- d) Beauty or Barber Shop
- e) Long Distance Phone Call – Clients may have telephone or cable TV on their own room at the resident's expense.
- f) Nourishment (Ensure, etc as ordered by the physician)

5) **MONTHLY COST:**

The monthly fee for basic services is \$ 1200, pro-rated on a daily basis, to be paid in advance by the 1st of each month. Bills not paid by the 5th of the month will be assessed a \$ 25.00. Habitual late payment (up to 3x) shall be a ground for eviction. A deposit of 30 days and first month rent shall be required on admission.

6) **OTHER FEES:**

A one time fee of \$250.00 for set up and administrative fee shall be assessed and payable on admission. This is non refundable regardless of how long the clients stay at the facility.

7) **REFUND POLICY:**

- a) The resident is required to give 30 days written notice of intent to move.
- b) Tenancy with (Gentle Spring) is a MONTH to MONTH tenancy; therefore resident/responsible party is completely responsible for the entire month whether resident leaves before the month is over for any reason such as HOSPITALIZATION, RELOCATION TO A NURSING HOME, RELOCATION TO ANOTHER GROUP CARE FACILITY, GOING ON VACATION, and AND DEATH.

8) **TEMPORARY ABSENCE:**

In cases of temporary absence the monthly rate remains the same. In case of absence due to hospitalization, family vacation or any other reason, daily rate will continue to incur until the resident's belongings are removed from the room.

9) **RATE INCREASES:**

The facility shall notify the resident 30 days prior to any change in the residents monthly rate as assessed that may be due to change in level of care and or other needs not determined during pre-placement.

10) **EVICTON PROCEDURE:**

- a) The licensee/administrator upon 30 days written notice to the resident, evict the resident for any of the following reasons:
 - i) Non-payment of monthly fee within 5 days of the due date.

- ii) Failure of the resident to comply with state or local law after receiving written notice of the alleged violation.
- iii) Failure of the resident/representative to comply with the facility's policies and/or House Rules as signed on admission. The facility retains the right to revise the House Rules as needed to ensure safe and efficient services; the resident agrees to abide by the House Rules and any of its revisions.
- b) The licensee or administrator of the facility, upon obtaining written and/or documented telephone approval from the licensing agency, evict the resident upon 3 days written notice to quit. The licensing agency may grant approval for the eviction upon finding a good cause. 'Good cause' is engaging in a behavior which is a threat to the mental and physical health and safety to himself or to the other residents or to the staff.

11) RESIDENT'S NEEDS:

If a re-evaluation of a resident indicates that we were unable to provide appropriate care provided to applicable regulations, the resident and/or his representative will be notified and given ample time to relocate with a minimum of 15 days written notice.

12) VISITING POLICY:

The Visiting hours shall be 1000am to 7pm. Otherwise; advance arrangement with the facility may be needed. The Right to Privacy will be observed at all times, therefore, visiting in a shared room may not be allowed. Visitors are requested to sign the Visitor's Log Book. Resident and/or representative should log out when they are going out and should log in when they return in the Resident Absence Log Book.

- 13) PAYEE:** is the responsible party for paying the basic monthly rate. The above listed person shall make sure they or the resident:

- a) Pays the monthly fee by the first of the month
- b) Cooperate with the House Rules of the facility.

14) FUNDING SOURCE:

The resident's funding source is: Private

Government

WEAKC

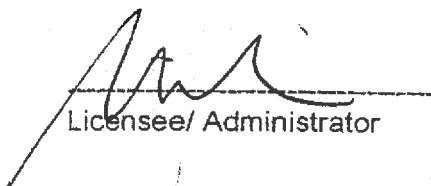
15) INSPECTION RIGHTS:

The BLC, licensing agency, to ensure the best of care the facility is providing them has the right to interview the resident and inspect the resident's record.

16) COMPLAINT PROCEDURE:

Should there be a problem or questions, the administrator could be contacted on the house or cell phone. Administrator may then suggest a meeting to discuss and resolve questions in the facility.


The licensee and resident or responsible party shall comply with all terms and conditions set forth in this agreement. My signature below as a resident or authorized representative indicates that I have read, or had read and explained to, the provisions of this agreement, and enter this agreement voluntarily.



Licensee/ Administrator

1/30/15

Date



Responsible Party

1/30/2015

Date

NO REFUND POLICY

I, _____ (Resident), AND / OR Corrine Dileo Responsible Party) acknowledged the receipt of the Admission Contract, dated _____ Initial

cdl "NO REFUND POLICY" do not apply on the **SECURITY DEPOSIT**.

cdl The "NO REFUND POLICY" is binding upon the Heirs, Relatives, Assigned Friends, and Successors in interest to the parties.

cdl Tenancy with the group care facility is a **MONTH TO MONTH** Tenancy, therefore you are completely responsible for the entire month whether you leave before the month is over. In short, **NO REFUND** will be given for the remaining days of the month whether having left the facility due to **HOSPITALIZATION, RELOCATION TO A NURSING HOME, RELOCATION TO ANOTHER GROUP CARE FACILITY, GOING ON VACATION, OR DEATH**, or any other circumstances.

cdl No verbal agreements will enter into this written agreement.

By signing below, I (WE) acknowledge the No Refund Policy. The facility has fully explained to me or us the terms and conditions of the Admission Contract. It is very clear and explicit, **NO REFUNDS, NO EXCEPTIONS**. I (WE) have read, understood, and agreed to all the terms mentioned above.

Corrine R Dileo
Signature of Resident or Responsible Party
(Guardian, Guarantor, Conservator, or POA)

30/15
Date

Corrine Dileo
Print Name

[Signature]
Facility Administrator

30/15
Date

NO REFUND POLICY

Facility Policy

Resident shall not be segregated or restricted on the grounds of race, color or National origin. (Non-discrimination policy is posted in the facility)

Residents admitted must:

- a. Have the physical and cognitive capabilities that meet the standards under which the facility is licensed.
- b. be at least 18 years of age
- c. be free of active TB
- d. not require restraint (either physical or chemical)
- e. not be required to be confined in locked quarters
- f. not require 24 hr. skilled nursing or medical supervision

The residential facility shall maintain conditions in which the residents may exercise the following rights:

- a. To be free from abuse, neglect and exploitation on the part of residential facility staff
- b. To be free from abuse and exploitation the part of other residents or visitors.
- c. To speak with advocates.
- d. To be treated with respect and dignity.
- e. To live in a safe and comfortable environment.
- f. Freedom to have social interaction and communication that are without restriction and to engage in private conversation.
- g. To be able to lodge a complaint or grievance and receive a response in a timely manner.
- h. To initiate an advance directive and/or power of attorney for healthcare decisions and to have the wishes contained in such documents complied.

All grievances shall be directed to the administrator and shall be responded to shortly. The facility shall maintain a record of grievances and the facility's response to the resident shall be documented.

Residents shall be the opportunity to attend religious services of his/her choice and participate in person and pastoral counseling.

Residents will be allowed to enter or leave the facility at any time (depending on Physical and mental abilities) and with prior notice to facility staff.

Residents allowed to rest in their room as desired.

Activities suited to resident interests and capabilities will be provided. Residents shall be encouraged to contribute to the planning activities.

Protective supervision and adequate staffing will be provided for residents at all times.

Residents to receive their own mail.

Evacuation plan will be posted in the facility and understood by employees and residents.

All residents will be instructed regarding the facility's evacuation procedures.

Resident signature: James R. D. Lee

Administrator signature: [Signature]

Facility Policies

Page 2

A list of emergency numbers will be posted by the facility telephone.
(Fire Dept, paramedics (911) and physicians).

Residents admitted will have doctor statement describing their physical and medical conditions, medications and ambulating status.

Resident's personal physician will be notified in case of illness, injury or accident. This will be recorded in the resident file.

A written record of all accidents, injuries and illnesses of residents will be kept.

A temporary illness may be cared for in this facility if approved by the doctor.

The resident doctor must approve all medication, including over-the-counter meds.

All medication will be kept in the original container.

All ongoing list of meds taken and/or discontinued will be on file. An individual record will be kept daily to ensure that the resident has taken medication as prescribed.

The prescription bottle will identify the frequency of the medication. Changes in frequency will be documented in the file and validated by the doctor.

Refrigerated medications with resident name, kept in locked box.

Discontinued meds flushed into the toilet. This is documented in the resident's med record and signed by the administrator and a witness.

A current state license will be posted to validate compliance with state requirements for Group Care Home.

Ramps will be provided at exits for residents who use wheelchairs. Accessible bathrooms and bathing facilities will be provided for residents with wheelchairs or walkers.

Caregivers all trained in first aid and CPR. At least one caregiver on duty at all times.
First aid kit available in the facility.

Laundry done on a daily basis.

An adequate linen supplies always available for weekly linen changes or more if necessary.
Clean towels and washcloths provided for each bath.

Meal times are at follows: Breakfast: 7:30 am
 Lunch: noon
 Dinner: 5:00 PM

Snacks provided midafternoon and evening.

Telephone available for the residents use, local calls only.

Smoking permitted OUTSIDE ONLY.....

Facility Policies
Page 3

Visiting hours are 6:00 AM to 7:00 PM.

Supervision provided at all times for residents at the facility.

I have read the facility policies.

Corrine R. D. Co
Resident or Responsible Party

1/30/15
Dated

AM
Administrator

1/30/15
Dated

Resident's Money and Personal Property Notice

This facility will not be responsible for money or personal property. We suggest that the resident keep no more than \$50.00 in the facility. No employee shall keep any personal belongings or money for any resident.

This facility will make arrangements for any resident to go to his/her bank or ATM machine to withdraw needed funds during normal business hours on each business day.

If a member of the staff of this facility receives a request from a resident to make a withdrawal of money in such an amount that the member of the staff has reason to believe the resident is being or has been exploited, the member of the staff shall report the transaction to:

**DIVISION OF AGING SERVICES, THE WELFARE DIVISION, CLARK COUNTY
SENIOR PROTECTIVE SERVICES OR THE METROPOLITAN POLICE
DEPARTMENT OF LAS VEGAS.**

The Administrator, Owner or Staff member shall not accept appointment as a guardian or conservator of the estate of any resident, become a substitute payee for any payments made to any resident or accept an appointment as attorney in fact for any resident.


If a resident whose only source of income is in the form of monthly checks is legally determined to be unable to manage this money and documentary evidence can be produced showing that efforts to obtain a legal guardian have failed, the facility will no longer be able to provide care for the resident.

**NO MONEY WILL BE HELD BY THIS FACILITY ON BEHALF OF ANY
RESIDENT.**

**NO RESIDENT SHALL LEND MONEY TO AN EMPLOYEE OF THIS FACILITY.
NO EXCEPTIONS!**




Signature of Resident/Responsible Party



Date



Administrator's Signature



Date

EXHIBIT ‘B’

BELLA ESTATE CARE HOME

Resident Agreement Addendum

Grievance and Arbitration

1. **Grievances:** Resident may voice reasonable grievances about services rendered by staff or other personnel and the Home shall record such grievances upon request to do so. In the event of a written grievances, the Home shall investigate it and make written reply to residents of the Home's findings with a reasonable period thereafter.

2 **Arbitration:** Any controversy, dispute or disagreement, whether sounding in tort or contract to law, arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, shall be settled exclusively by binding arbitration, which shall be conducted in (City, State) in accordance with American health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the Arbitration, shall be binding of all parties to the agreement and judgment on the award rendered by the arbitrator maybe entered in any court having jurisdiction thereof. The parties shall agree upon a sole arbitrator of their choice and if they cannot agree on a single arbitrator there shall be three arbitrators with the neutrals arbitrator chosen by the parties' nominated arbitrators.

Corinne R D, Co
Resident Responsible Party

1/30/2015
Date

A
Resident Responsible Party

1/30/15
Date

EXHIBIT ‘C’

DECLARATION OF MIKI TON

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

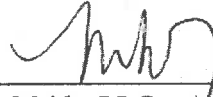
I, MIKI TON, being first duly sworn, depose and state as follows:

1. I make this Declaration in support Defendants' Motion to Compel Arbitration. I make this declaration from my personal knowledge and, if called upon to do so, could and would competently testify to the matters set forth herein in a court of law.
2. I am the operations manager for Maide, LLC ("Maide"), which owns and operates several residential homes for groups throughout Las Vegas, including Gentle Spring Care ("Gentle Spring") and Bella Estate Care Home ("Bella Estate"). Maide owns and operates both of these residential facilities under a fictitious names that have been registered with the Nevada Secretary of State's Office.
3. I have reviewed the Resident Agreement Addendum that is attached to Defendants' Motion to Compel Arbitration as Exhibit "A."
4. I can attest that this document is a true and accurate copy of the Resident Addendum Agreement that Corinne Dileo signed on behalf of Thomas Dileo prior to his residency at Gentle Spring.
5. The Resident Addendum Agreement reads "Bella Estate Care Home" at the top of the document because we at times use resident intake paperwork interchangeably because each facility is owned and operated by Maide.
6. I can attest that at the time of Mr. Dileo's admission, Corinne Dileo was made aware that Mr. Dileo was being admitted into Gentle Spring and that all paperwork she was signing was in relation to Mr. Dileo's admission to Gentle Spring. All parties understood that any agreements Corinne Dileo signed with Gentle Spring on

Thomas Dileo's behalf were between Maide, LLC dba Gentle Spring Care Home and
Corinne Dileo on behalf of Mr. Dileo.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

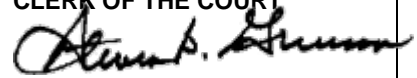
Subscribed to and sworn this 8th day of October, 2019.



Miki Ton for Maide, LLC as its Operations Manager

No notarization required pursuant to NRS 53.045

6



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

CORINNE DILEO, ET AL.,)

Plaintiffs,)

vs.)

MAIDE, LLC, ET AL.,)

Defendants.)

CASE NO. A-19-797533-C

DEPT. NO. XIV

Transcript of Proceedings

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR JUDGE

DEFENDANTS' MOTION TO COMPEL ARBITRATION

TUESDAY, JANUARY 28, 2020

APPEARANCES:

For the Plaintiffs: HUNTER SHAW DAVIDSON, ESQ.

For the Defendants: JOHN M. ORR, ESQ.

RECORDED BY: SANDRA ANDERSON, DISTRICT COURT

TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

1 TUESDAY, JANUARY 28, 2020 AT 9:36 A.M.

2

3 MR. DAVIDSON: Good morning, Your Honor. Hunter
4 Davidson on behalf of plaintiff.

5 MR. ORR: Good morning, Your Honor. John Orr here
6 for Maide, LLC.

7 THE COURT: Maide, LLC. Okay. This is Maide,
8 LLC's Motion.

9 MR. ORR: Thank you.

10 So, I think the issues here are pretty
11 straightforward, Your Honor. The first issue being: Do we
12 have a valid and enforceable contract here? There's no
13 suggestion that Mrs. DiLeo did not have the capacity to
14 enter into this contract, as Mr. DiLeo's personal
15 representative. That's not in dispute here. There's no
16 dispute --

17 THE COURT: Was it a general power of attorney?

18 MR. ORR: As -- I mean, Mr. Davidson would be in a
19 better position to answer that --

20 THE COURT: I didn't see a copy of it.

21 MR. ORR: Yeah. I don't know, but I --

22 THE COURT: That's, apparently, not an issue.

23 MR. ORR: No.

24 MR. DAVIDSON: We're not disputing that she did,
25 in fact, have a power of attorney, --

1 THE COURT: Okay.

2 MR. DAVIDSON: -- Your Honor.

3 MR. ORR: So, what plaintiffs are saying, though,
4 is: Well, the contract -- it says Bella Estate Care at the
5 top. We submitted an affidavit for Mrs. Ton, who is the --
6 for all intents and purposes, the corporate representative
7 of Maide, LLC, saying, you know, we ran out of copies that
8 had the Gentle Spring Care Home, so we used one from a
9 different home that the LLC owns. Either way, this Court
10 can look beyond the contract and look at the circumstances
11 of the transactions to determine the intent of the parties.
12 And I think that's what plaintiff is trying to say here is:
13 Oh, well, it's a technicality. Well, it says Bella Estate
14 Care Home, not Gentle Spring, therefore it's an invalid
15 contract.

16 THE COURT: Well, I think we knew where he was
17 going. So, I'm not particularly concerned about that.

18 MR. ORR: Okay. Great. So, I'm happy to move on
19 from that point then.

20 With the second point that the contract is --
21 violates NRS 597.995, I think that also lacks merit. If
22 you refer to Exhibit B of our Reply, we -- and our Motion
23 as well, we attach the Agreement, which clearly says at the
24 top: Grievances and Arbitration. It has two little
25 paragraphs there and a separate signature block for the

1 arbitration clause. That's important because that statute
2 says you have to have a specific authorization for the
3 arbitration. This *Fat Hat* case is instructive for us
4 because it talks about an arbitration clause that's buried
5 in an arbitration agreement and didn't require specific
6 signature of the parties and sign and date. So, they say,
7 no, that's -- the Supreme Court says: No, that's a valid -
8 - because, I mean, it's common sense. You're burying this
9 arbitration clause in the [indiscernible] of the contract
10 and misleading people. This is not the case here. It's
11 quite the opposite. There's a five-page Resident Agreement
12 and then a separate Addendum with a separate signature
13 block, signature and date, for Mrs. DiLeo to sign. That's
14 set aside from the rest of the agreement. I'm not sure how
15 much more of a specific authorization you can get than
16 that. So, you know, I think it completely complies with
17 NRS 597.995.

18 I think the juicier issue here is the issue of who
19 can be compelled to arbitrate. Here we have an estate, who
20 is represented by the personal representative, Mrs. DiLeo,
21 and then Mr. DiLeo's statutory heirs, who have wrongful
22 death claims. The elder abuse and the negligence claim,
23 obviously, belong to the estate. So, I think if you read
24 the letter of the statute, it's: Okay, well, the estate's
25 bound to the contractual obligations of Mr. DiLeo. So the

1 estate is going to go to arbitration and the statute says:
2 Well, then, you have to stay the heirs' claims during the
3 pendency of the arbitration.

4 I think all parties should be compelled to
5 arbitrate because, doing that, and I think Mr. Davidson
6 would even agree and Your Honor would agree, adjudicating
7 those same claims in two different forums is a complete
8 waste of judicial resources. It's a complete waste of all
9 of the parties' time and the question becomes --

10 THE COURT: But the heirs aren't bound by the
11 agreement.

12 MR. ORR: Well, I think they are, Your Honor, and
13 I think the question is: Well, by what mechanism are they
14 bound by the agreement?

15 THE COURT: Yeah. Question: How do they get
16 bound by an agreement to arbitrate?

17 MR. ORR: I think it's the public policy that
18 binds them to arbitrate and because it completely -- the
19 public policy in Nevada is to arbitrate and here we have a
20 valid arbitration clause. And this isn't the case where we
21 have someone who's, you know, completely -- has a complete
22 set of facts that can be litigated. There's the common
23 nucleus of operative facts. And, so, it offends the public
24 policy to make both parties to go on these parallel tracks
25 when -- I mean, you could have problems with res judicata

1 and have inconsistent results. And, so, I think that's the
2 mechanism by which both parties can be compelled to
3 arbitrate is the public policy, otherwise you arrive at
4 this absurd result.

5 And I think, too, as we pointed out in our motion
6 practice, --

7 THE COURT: It's an absurd result, but I'm having
8 a tough time making heirs who didn't sign the agreement
9 arbitrate.

10 MR. ORR: You know, and I think my -- I was
11 thinking about that on the drive in, and my response to
12 that is -- because that's kind of one of the greatest tips.
13 Right? I do a lot of these as representing nursing
14 facilities and how can you compel people who are not
15 parties to a contract? And I'm not asking the Court to
16 make some categorical ruling that that can apply, you know,
17 in a variety of situations. It's just in this instance
18 where you have a wrongful death claim asserted by heirs and
19 an estate where it's the exact same set of facts, exact
20 same experts --

21 THE COURT: I understand.

22 MR. ORR: So, I think that what's ironic is no
23 right is absolute. In fact, what's ironic to me is my
24 client has a contractual right, which is just as sacrosanct
25 as a constitutional right to arbitrate -- constitutional

1 right to a jury trial, yet my client's right to their
2 contract, to enforce their contract, is decided without a
3 jury. It's decided by a judge. So, I think that drives
4 home this point that although certainly your constitutional
5 right to a jury is important, there are mechanisms by which
6 you -- that right is not absolute. And I think because of
7 our public policy, and because of this absurd result, it
8 makes the most sense for all parties to arbitrate in this
9 instance.

10 THE COURT: I'm having a tough time with that.

11 MR. ORR: And I appreciate you're having a tough
12 time, but, you know, the -- that's the hook here. It's
13 that public policy because I think Your Honor understands
14 and that's why you're having a tough time, is it is
15 completely absurd --

16 THE COURT: It is an absurd result.

17 MR. ORR: -- to make us litigate on this --

18 THE COURT: I mean, well, --

19 MR. ORR: So, I mean, that's my main argument,
20 Your Honor, regarding whether we -- all parties can
21 arbitrate. So, just to sum it up, I think this is an
22 enforceable, valid contract. If anything, the estate's
23 claims have to go to arbitration.

24 THE COURT: If I find that the administrator has
25 to arbitrate, and not the heirs, do I stay the heirs' claim

1 until we've completed arbitration?

2 MR. ORR: Yes. That's what NRS 38.221 subsection
3 7 says, is that the claims that are -- that aren't subject
4 have to be stayed during the pendency of the estate's
5 arbitration. So, but, like I said, given this absurd
6 result and the public policy, I think it's fair under the
7 circumstances to make all parties arbitrate.

8 So, with that, I'll [indiscernible] to Mr.
9 Davidson.

10 MR. DAVIDSON: Good morning, Your Honor. Just in
11 response to that, I don't think we need to go down that
12 route of trying to differentiate going through two
13 different proceedings, one in arbitration, one through the
14 court system, and staying the court proceeding as we're
15 awaiting the arbitration be finished. And, again, that's
16 just strictly under NRS 597.995. The statute could not be
17 clearer on its face. It says:

18 Under the applicable version, if an agreement
19 includes a provision which requires a person to submit
20 to arbitration for any dispute, it must include
21 specific authorization for that one provision.

22 And, again, we flip to their Addendum, which is an
23 entirely different contract. There's two provisions on it
24 and there needs to be specific authorization to that second
25 provision, which specifically goes to arbitration.

1 Throughout their briefing, they recognize that we do have
2 two contracts here. We have the Residential Agreement and
3 then we have this Addendum. Both are separately signed;
4 both are separately dated. With that being said, we have a
5 separate contract here with the Addendum and within it,
6 there are two provisions there, one for grievances and one
7 for arbitration. And, under NRS 5997, you need to have a
8 specific authorization next to that arbitration provision.
9 It can be an initial, it can be a signature, anything of
10 the like and then --

11 THE COURT: The signatures are right below. It's
12 pretty clear.

13 MR. DAVIDSON: Correct, Your Honor, but this goes
14 to even --

15 THE COURT: I have it in front of me here.

16 MR. DAVIDSON: Understood, Your Honor. But this
17 goes to one of the illustrations that was in *Fat Hat*. In
18 *Fat Hat*, the arbitration provision was the last provision
19 on the contract for one of the cases that was within *Fat*
20 *Hat*. And, then, the signature line was right below the
21 arbitration and then also was considered the signature line
22 for the entire agreement in and of itself --

23 THE COURT: But by putting it as a separate
24 agreement, with just that signature for that agreement, it
25 sounds like it's pretty clear.

1 MR. DAVIDSON: And, again, Your Honor, it's -- the
2 statute itself says for that specific provision, and we
3 have more than one provision here. You know, I know we can
4 reach the point that we're splitting hairs, but that's what
5 the statute demands.

6 THE COURT: Actually they're combined. It's
7 grievances and arbitration. So, --

8 MR. DAVIDSON: Correct, Your Honor, but right
9 there, listed Number 2, is clearly the arbitration
10 provision that would require this specific authorization
11 under NRS 5997 --

12 THE COURT: Yeah. I think it's binding. I --

13 MR. DAVIDSON: Nevertheless, I mean, turning just
14 to the nature of the Addendum in and of itself, as you've
15 indicated, you can't bind the heirs to an agreement they
16 had --

17 THE COURT: I agree you can't bind the heirs.

18 MR. DAVIDSON: They had no con -- you know, no
19 understanding of doing so. At the point, there does have
20 to be -- you know, we can't be subjecting them to binding
21 arbitration --

22 THE COURT: I agree.

23 MR. DAVIDSON: -- and throwing away their jury
24 trial in and of itself.

25 And I would just ask, again, that this remains in

1 the court system. One, for that reason, it wouldn't be
2 judicially efficient to separate the two.

3 THE COURT: I agree it's not judicially efficient.

4 MR. DAVIDSON: And, then, two, again, I would just
5 ask that, you know, these binding arbitration provisions
6 have serious implications and I would ask, you know, put
7 more effort in and more thought process into drafting it.
8 What we have here is a very sloppy Addendum. It's not the
9 right defendant.

10 THE COURT: But it was done separate and apart
11 just for this purpose.

12 MR. DAVIDSON: Possibly so. It was signed and
13 dated the same exact day.

14 THE COURT: It's clear. It's quite clear to me
15 it's separate and apart and as an Addendum just for this
16 arbitration clause. So, that ought to be good.

17 MR. DAVIDSON: Understood, Your Honor, but, again,
18 you have the incorrect defendants. They couldn't even fill
19 in where the arbitration was gonna take place. There's no
20 evidence of who even signed off from the facility on this
21 agreement.

22 THE COURT: They don't have to. It has to be --
23 it's by the party to be [indiscernible].

24 MR. DAVIDSON: Understood, Your Honor.

25 THE COURT: I'll grant the Motion as to the estate

1 only, stay the case in so far as the heirs are concerned.

2 MR. ORR: Thank you, Your Honor.

3 MR. DAVIDSON: Thank you, Your Honor.

4 THE COURT: Who's going to prepare the Order?

5 MR. ORR: I'll be happy to.

6 THE COURT: Thank you. Submit it to counsel,

7 please.

8 MR. ORR: Thank you.

9

10 PROCEEDING CONCLUDED AT 9:47 A.M.

11 * * * * *

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1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

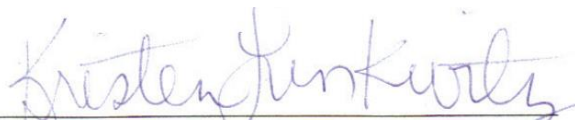
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20 KRISTEN LUNKWITZ

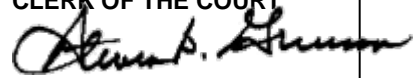
21 INDEPENDENT TRANSCRIBER

22

23

24

25



COGBURN LAW
Jamie S. Cogburn, Esq.
Nevada Bar No. 8409
jsc@cogburncares.com
Hunter S. Davidson, Esq.
Nevada Bar No. 14860
hsd@cogburncares.com
2580 St. Rose Parkway, Suite 330
Henderson, Nevada 89074
Telephone: (702) 748-7777
Facsimile: (702) 966-3880
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

CORINNE R. DILEO as Special
Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR. as Statutory
Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
DILEO

Plaintiffs,

vs.

MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
INDIVIDUALS 1–10, inclusive; ROE
ENTITIES 11–20, inclusive;

Defendants.

Case No.: A-19-797533-C
Dept. No.: 1

**PLAINTIFFS' MOTION FOR
REHEARING ON DEFENDANTS'
MOTION TO COMPEL ARBITRATION**

(Hearing Requested)

Plaintiffs Corinne R. DiLeo, as Special Administrator for the Estate of Thomas DiLeo,
Thomas DiLeo, Jr., as Statutory Heir to Thomas DiLeo, and Cindy DiLeo, as Statutory Heir to
Thomas DiLeo (collectively, "Plaintiffs"), by and through their counsel of record, Jamie S.
Cogburn, Esq. and Hunter S. Davidson, Esq. of Cogburn Law, hereby file their Motion for
Rehearing on Defendants' Motion to Compel Arbitration ("Motion for Rehearing").

1 This Motion for Rehearing is made and based upon the following Memorandum of Points
2 and Authorities, the papers and pleadings on file herein, any exhibits attached hereto, and any oral
3 argument this Court may entertain at the time of hearing on this matter.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 This case arises from the neglect of an “older person,”¹ Thomas DiLeo (“Decedent”), while
7 he was admitted at Defendant’s skilled-nursing facility. After being admitted for dementia,
8 Decedent injured his leg on a wheelchair while in the skilled-nursing facility. When treating
9 Decedent’s leg, Defendants wrapped his leg too tightly with an elastic bandage wrap, causing his
10 leg to develop gangrene. Within weeks of his leg injury, Decedent was transported to the hospital,
11 where he had his leg amputated to reduce further harm from the gangrene. Decedent passed away
12 one week after the amputation.

13 This Motion respectfully submits that this Court’s Order compelling Plaintiff Corinne R.
14 DiLeo’s Special Administrator claims into binding arbitration is clearly erroneous and, therefore,
15 should be reheard. The plain language of NRS 597.995(1) could not be clearer:

16 [A]n agreement which includes a provision which requires a person to submit to
17 arbitration any dispute arising between the parties to the agreement **must include**
18 **specific authorization for the provision** which indicates that the person has
affirmatively agreed to **the provision**.

19 Here, the subject Arbitration Provision lacks NRS 597.995(1)’s mandatory specific
20 authorization. Therefore, compelling Plaintiff Corinne R. DiLeo’s Special Administrator claims
21 into binding arbitration was clearly erroneous.

22 ///

23 ///

24

25 ¹ See NRS 41.1395.

1 **II. BACKGROUND**

2 **A. Statement of Relevant Facts**

3 As alluded to above, Defendants Maide, L.L.C. d/b/a Gentle Spring Care Home (“Maide”),
4 Sokhena K. Huch (“Huch”), and Miki N. Ton (“Ton”), at all relevant times, owned, operated, and
5 controlled the Gentle Spring Care Home skilled-nursing facility, located at 6418 Spring Meadow
6 Drive, Las Vegas, Nevada 89103 (“Nursing Facility”).²

7 In or about the year 2014, Decedent was admitted to Defendants’ Nursing Facility because
8 he suffered from dementia and required 24-hour care and supervision. This constant care and
9 supervision included Decedent’s most basic needs, such as, providing him with food, shelter,
10 clothing, and services necessary to maintain his physical and mental health.

11 In or about July 2017, Decedent injured his leg on a wheelchair while at the Nursing
12 Facility. To treat Decedent’s leg injury, an employee or agent of the Nursing Facility wrapped
13 Decedent’s leg with an elastic bandage wrap and would not let Decedent remove it, despite him
14 expressing discomfort. Unfortunately for Decedent, the elastic band wrap was applied too tightly,
15 causing Decedent to develop gangrene on his leg. After noticing that Decedent’s leg began to
16 change colors, the Nursing Facility attempted to treat Decedent themselves, rather than
17 transporting him to a hospital.

18 On or about July 21, 2017, after realizing the Nursing Facility would not transport
19 Decedent to a hospital, Plaintiff Cindy DiLeo called 911 and had Decedent immediately
20 transported to Spring Valley Hospital. Upon being admitted to Spring Valley Hospital, hospital
21 physicians determined they needed to amputate Decedent’s leg that developed gangrene. On or
22 about August 3, 2017, Decedent’s leg was amputated. On or about August 10, 2017, Decedent
23 passed away from complications stemming for Defendant’s inadequate care.

24 _____
25 ² See Pl.’s Comp. at ¶ 11; Def.’s Answer at ¶ 5 (“Answering Paragraphs 7, 8, 9 and 11 of Plaintiffs’ Complaint, Defendant admits to the allegations contained therein.”).

1 **B. Procedural History**

2 On June 27, 2019, Plaintiffs filed their Complaint, asserting the following causes of action
3 against each of the Defendants: (1) Abuse/Neglect of an Older Person; (2) Negligence; (3)
4 Wrongful Death; and (4) Survival Action. On August 14, 2019, Defendants filed their Answer to
5 Plaintiff's Complaint.

6 On September 13, 2019, Defendants filed a Motion to Compel Arbitration arguing the
7 instant matter should be removed into binding arbitration pursuant to the Arbitration Agreement
8 purportedly entered between Decedent and Defendants on January 30, 2015.³ The Arbitration
9 Agreement provided by Defendants is merely part of a one-page "Resident Agreement
10 Addendum." Importantly, the Arbitration Agreement only lists the names of Plaintiff Corinne R.
11 DiLeo, who had a power of attorney over Decedent, and Bella Estate Home Care, which is an
12 entirely different nursing facility, located at 3140 Coachlight Circle, Las Vegas, Nevada 89117.⁴
13 That is, the Arbitration Agreement makes no mention of Defendant Maide, Defendant Huch,
14 Defendant Ton, or any other individual or entity that has the authority to bind Defendants to an
15 Arbitration Agreement. Notwithstanding these deficiencies, the Arbitration Agreement, in relevant
16 part, states:

17 **2 Arbitration:** Any controversy, dispute or disagreement, whether sounding
18 in tort or contract to law, arising out of or relating to this Agreement, the breach
19 thereof, or the subject matter thereof, shall be settled exclusively by binding
20 arbitration, which shall be conducted in (City, State) in accordance with American
21 health [sic] Lawyers Association Alternative Dispute Resolution Service Rules of
Procedure for Arbitration, and which to the extent of the subject matter of the
Arbitration, shall be binding of all parties to the agreement and judgment on the
award rendered by the arbitrator maybe [sic] entered in any court having
jurisdiction thereof. The parties shall agree upon a sole arbitrator of their choice

22
23 ³ See generally Exhibit A of Defendants Maide, L.L.C. d/b/a Gentle Spring Care Home's, Sokhena K. Huch's, and Miki N. Ton's Motion to Compel Arbitration.

24 ⁴ See Nevada Division of Public and Behavioral Health ("NVDPBH") Licensee Search, attached hereto as **Exhibit 1**;
25 NVDPBH May 15, 2014 Inspection of Bella Estate Care Home, attached hereto as **Exhibit 2**; NVDPBH April 1, 2015 Inspection of Bella Estate Care Home, attached hereto as **Exhibit 3**; Stipulation for Settlement of Disciplinary Actions, entered August 6, 2015, attached hereto as **Exhibit 4**, at ¶ 3.

1 and if they cannot agree on a single arbitrator there shall be three arbitrators with
2 the neutrals [sic] arbitrator chosen by the parties' nominated arbitrators.

3 On January 28, 2020, Defendants' Motion to Compel Arbitration came before Senior Judge
4 Charles Thompson, who held that the Arbitration Agreement was binding on the Special
5 Administrator for the Estate of Thomas Dileo, but not binding on the heirs to Thomas DiLeo.⁵ As
6 such, Plaintiff Corinne R. DiLeo's Special Administrator claims against Defendants for Elder
7 Abuse, Wrongful Death, and Survival Action would be subject to binding arbitration, while
8 Plaintiff Thomas DiLeo, Jr. and Cindy DiLeo's statutory heir claims against Defendants for
9 Wrongful Death would be stayed in district court during the pendency of the binding arbitration.⁶

10 On April 3, 2020, your Honor signed Defendants' proposed Order regarding their Motion
11 to Compel Arbitration. Defendants have yet to file a Notice of Entry of the Order.⁷

12 **III. LEGAL STANDARD**

13 A district court may reconsider a previously-decided issue if the prior decision was clearly
14 erroneous. *See* EDCR 2.24; *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga, &*
15 *Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). A finding is "clearly erroneous" when,
16 although there is evidence to support it, the reviewing court on the entire evidence is left with the
17 definite and firm conviction that a mistake has been committed. *Unionamerica Mortg. & Equity*
18 *Tr. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981). Here, Plaintiff respectfully
19 submits that the Court's Order compelling Plaintiff Corinne R. DiLeo's Special Administrator
20 claims into binding arbitration is clearly erroneous and, therefore, should be reheard.

21 ///

22 ///

23 ⁵ See Minute Order from Hearing on Defendants' Motion to Compel Arbitration, attached hereto as **Exhibit 5**.

24 ⁶ See *id.*

25 ⁷ As such, Plaintiff's Motion for Rehearing is timely pursuant to EDCR 2.24(b).

1 **IV. LEGAL ARGUMENT**

2 NRS 597.995(1) (2013)⁸ states that any agreement with a provision requiring a person to
3 submit to arbitration “any dispute arising between the parties” must include specific authorization
4 indicating the person affirmatively agrees to *that provision*. If the agreement fails to include
5 specific authorization for the provision requiring submission to arbitration for “any dispute arising
6 between the parties,” then the provision is void and unenforceable. NRS 597.995(2) (2013). Here,
7 Plaintiff respectfully submits that the Court’s Order is clearly erroneous because the Arbitration
8 Provision in the “Bella Estate Care Home Resident Agreement Addendum” lacks the specific
9 authorization required under NRS 597.995.

10 **A. The Court’s Order is clearly erroneous because the “Bella Estate Care Home**
11 **Resident Agreement Addendum” is a separate agreement that lacks the**
12 **specific authorization required under NRS 597.995.**

13 When evaluating any contract or agreement, courts should limit their inquiry to the four
14 corners of the contract. *See State Dep’t of Transportation v. Eighth Judicial Dist. Court in & for*
15 *Cty. of Clark*, 133 Nev. 549, 554, 402 P.3d 677, 682–83 (2017). If a contract or agreement is
16 ambiguous—i.e. subject to more than one reasonable interpretation—then the ambiguity should
17 be construed against the drafter. *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215–16, 163
18 P.3d 405, 407 (2007).

19 Here, Plaintiff respectfully maintains that the Court’s Order is clearly erroneous because
20 the “Bella Estate Care Home Resident Agreement Addendum” is a separate agreement that lacks
21 NRS 597.995’s specific authorization. In addition to listing an entirely different nursing home
22 from the Gentle Spring Care “Admission Agreement,” the “Bella Estate Care Home Resident
23 Agreement Addendum” also references itself as an entirely separate agreement. Specifically, the
24 second provision the “Bella Estate Care Home Resident Agreement Addendum” states:

25 ⁸ This statute was enacted in 2013 and amended in June 2019. Given the subject events occurred in 2017, the 2013
version of the statute applies.

1 Any controversy, dispute or disagreement, whether sounding in tort or contract to
2 law, arising out of or relating to **this Agreement**, the breach thereof, or the subject
matter thereof, shall be settled exclusively by binding arbitration

3 Thus, a closer evaluation of the “Bella Estate Care Home Resident Agreement Addendum”
4 reveals that it is a separate contract pertaining to the rights and responsibilities associated with
5 Resident “Grievances” (as outlined in the first provision). Given the “Bella Estate Care Home
6 Resident Agreement Addendum” is a separate contract, the second provision concerning
7 Arbitration must have specific authorization next to *that provision*. Here, the “Bella Estate Care
8 Home Resident Agreement Addendum” is merely signed in its entirety and, therefore, lacks the
9 specific authorization required under NRS 597.995.

10 **B. Even if the “Bella Estate Care Home Resident Agreement Addendum” is a**
11 **continuation of the Gentle Spring Care Home “Admission Agreement,” the**
12 **Court’s Order is clearly erroneous because the “Bella Estate Care Home**
Resident Agreement Addendum” lacks the specific authorization required
under NRS 597.995.

13 As alluded to above, the plain language of NRS 597.995(1) states that any contract
14 provision requiring an individual to submit to arbitration “any dispute arising between the parties”
15 must include specific authorization that indicates the individual affirmatively agrees to *that*
16 *provision*.

17 Here, even if the Court finds that the “Bella Estate Care Home Resident Agreement
18 Addendum” is a continuation of the Gentle Spring Care Home “Admission Agreement,” the
19 subject arbitration provision is still void and unenforceable because it lacks NRS 597.995’s
20 specific authorization. The executed “Bella Estate Care Home Resident Agreement” clearly
21 demonstrates that it is simply signed in its entirety by Plaintiff Corrine R. DiLeo; that is, it lacks
22 specific authorization as to the second provision regarding binding arbitration. As such, the
23 Arbitration Provision is void and unenforceable under NRS 597.995.

24 ///

25 ///

1 **II. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully request the Court rehear Defendants'
3 Motion to Compel Arbitration.

4 Dated this 21st day of April, 2020.

5 COGBURN LAW

6
7 By: /s/Hunter S. Davidson
8 Jamie S. Cogburn, Esq.
9 Nevada Bar No. 8409
10 Hunter S. Davidson, Esq.
11 Nevada Bar No. 14860
12 2580 St. Rose Parkway, Suite 330
13 Henderson, Nevada 89074
14 *Attorneys for Plaintiff*
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25

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFFS' MOTION FOR REHEARING ON DEFENDANTS' MOTION TO COMPEL ARBITRATION** was submitted electronically for service only with the Eighth Judicial District Court on the 21st day of April, 2020.

I further certify that I served a true and correct copy of the foregoing document as follows:

☒ Pursuant to NEFCR 9 & EDCR 8.05(a), electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

John Orr, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118
Attorney for Defendants

/s/Elia Barrientos
An employee of Cogburn Law

Exhibit 1

Licensee Search

Fields marked with asterisk (*) are required

Use the search fields below to find licensing and inspection report information about the following licensees:

- Health facilities: includes 40 types of medical, nonmedical and mental health-related business entities [FINDAHEALTHFACILITY.NV.GOV](#)
- Child care facilities [FINDCHILDCARE.NV.GOV](#)
- Medical Laboratories
- Dietitians
- Environmental Health Section
- Child care staff [FINDCHILDCARE.NV.GOV](#)
- Medical Laboratory Personnel
- Music therapists
- Kitchen, pool, and spa inside Health Facilities

Enter Search Criteria

If you only have a partial name of a facility/personnel or having troubles finding the facility by name, put the % sign before and after the partial wording% and all those with that word will appear, for example, %west%.

Business Unit *
Facility Name
Credential Number
(+) Address Information
(+) Additional Information

Health Facilities
bella estate

Entity Type
Credential Type

Agency
All

Reset Search Generate Excel Licensee Log-In

Search Results

Name ▲	Credential Type	Credential Number	Status	Expiration Date	Disciplinary Action	Address	Phone#	First Issue Date	Primary Contact Name	Primary Contact Role	Bed Count	Action
BELLA ESTATE CARE HOME	RESIDENTIAL FACILITY FOR GROUPS	7555-AGC-9	Active	12/31/2019	N/A	3140 COACHLIGHT CIRCLE LAS VEGAS NV 89117	702-220-4281	04/22/2013	SUSAN SOWERS	Administrator	10	View Detail

1-1 of 1 records

Aithent Licensing System Version 10.0.162 Dated: July 30, 2019 | Copyright © 2019 [Aithent Inc.](#)

For more information about licensing, follow the links below:

[Bureau of Health Care Quality and Compliance \(program info and complaint filing\).](#)

[Medical Laboratories \(program info and complaint filing\).](#)

[Childcare Licensing \(program info and complaint filing\).](#)

[Environmental Health Section](#)

[Dietitians Music Therapists \(program info and complaint filing\).](#)

https://nvdpbh.aithent.com/Protected/LIC/LicenseeSearch.aspx?Program=HHF&PubliSearch=Y&returnURL=~%2fLogin.aspx%3fTI%3d0#nback

APP. 00120

1/1

Exhibit 2

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED C 05/15/2014
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 000	<p>Initial Comments</p> <p>This Statement of Deficiencies was generated as a result of a State Licensure complaint investigation conducted at your facility on 5/15/14 in accordance with Nevada Administrative Code (NAC) 449, Residential Facility for Groups.</p> <p>The census at the time of the investigation was eight.</p> <p>Complaint #NV00039258 - The allegation regarding a caregiver working without a background check clearance was not substantiated through employee record review.</p> <p>#NV39258: The complaint investigative process was initiated by the Bureau of Health Care Quality and Compliance on 5/15/14.</p> <p>The investigation included:</p> <p>Review of three employee records including the criminal background checks. Record review revealed the criminal background checks for both caregivers were conducted according to NAC 449.123 requirements. Both State and FBI search results were negative.</p> <p>The findings and conclusions of any investigation by the Nevada Division of Public and Behavioral Health shall not be construed as prohibiting any criminal or civil investigations, actions, or other claims for relief that may be available to any party under applicable federal, state, or local laws.</p>	Y 000		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Exhibit 3

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 000	<p>Initial Comments</p> <p>AMENDED STATEMENT OF DEFICIENCIES</p> <p>This Statement of Deficiencies was generated as a result of an annual State Licensure survey and complaint investigation conducted in your facility on 4/1/15. This State Licensure survey was conducted by the authority of NRS 449.0307, Powers of the Division of Public and Behavioral Health.</p> <p>The facility is licensed for ten Residential Facility for Group beds for elderly and disabled persons and/or persons with mental illnesses and/or persons with chronic illnesses, five being Category I and five being Category II residents. The census at the time of the survey was ten. Ten resident files were reviewed and four employee files were reviewed. Complaint # NV00042345 was investigated during the survey.</p> <p>The complaint investigative process was initiated by the Division of Public and Behavioral Health on 4/1/15.</p> <p>Complaint #NV00042345 - The complaint contained one allegation. The complaint could not be substantiated.</p> <p>Allegation #1: Physical Environment - Safe environment not provided. A resident was living in the garage. The allegation could not be substantiated.</p> <p>The investigation for the allegation included:</p> <ul style="list-style-type: none"> -Observation of the facility revealed each of the ten residents had their own bed in either a shared room or an individual room inside of the facility. -Review of the caregiver schedule for the facility 	Y 000		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

04/22/15

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 000	Continued From page 1 revealed Employee #1 was scheduled as a 24 hour caregiver. - Interviews were conducted with two residents, two employees, and the Administrator which revealed Employee #1 was the individual who resided in the room in the garage. The findings and conclusions of any investigation by the Division of Public and Behavioral Health shall not be construed as prohibiting any criminal or civil investigations, actions or other claims for relief that may be available to any party under applicable federal, state, or local laws. The facility received a grade of D. The following deficiencies were identified:	Y 000		
Y 050 SS=F	449.194(1) Administrator's Responsibilities-Oversight NAC 449.194 Responsibilities of administrator. The administrator of a residential facility shall: 1. Provide oversight and direction for the members of the staff of the facility as necessary to ensure that residents receive needed services and protective supervision and that the facility is in compliance with the requirements of NAC 449.156 to 449.27706, inclusive, and chapter 449 of NRS. This Regulation is not met as evidenced by: Based on observation, record review and interview, the administrator failed to provide oversight and direction to the staff to ensure 10 of 10 residents received the needed services and	Y 050		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

JZC811

If continuation sheet 2 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 050	Continued From page 2 protective supervision they required. Evidenced by citations Y431, Y871, Y878, Y885, Y886, Y895, Y920, Y923, Y930, and Y936. Severity: 2 Scope: 3	Y 050		
Y 431	449.229(2) State Fire Marshall referral NAC 449.229 Requirements and precautions regarding safety from fire. 2. The Bureau shall notify the State Fire Marshal or the appropriate local government, as applicable, if, during an inspection of a residential facility, the Bureau knows of or suspects the presence of a violation of a regulation of the State Fire Marshal or a local ordinance relating to safety from fire. This Regulation is not met as evidenced by: Based on observation and interview, the facility failed to ensure 3 of 3 facility fire extinguishers were inspected annually. - State Fire Marshall referral Findings include: On 4/1/15 during a facility tour, three fire extinguishers were observed with a last service date for inspection and certification of 1/6/14. The extinguishers were located in the kitchen, in the hallway, and by the front door. On 4/1/15 at 5:05 PM, the Administrator acknowledged the service dates punched on the fire extinguisher tags.	Y 431		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

JZC811

If continuation sheet 3 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 871	Continued From page 3	Y 871		
Y 871 SS=F	<p>NAC 449.2742(1)(d)(1-8)(1)(e) Medication Plan</p> <p>NAC 449.2742 Administration of medication: Responsibilities of administrator, caregivers and employees of facility.</p> <p>1. The administrator of a residential facility that provides assistance to residents in the administration of medications shall: d) Develop and maintain a plan for managing the administration of medications at the residential facility, including, without limitation: (1) Preventing the use of outdated, damaged or contaminated medications; (2) Managing the medications for each resident in a manner which ensures that any prescription medications, over-the-counter medications and nutritional supplements are ordered, filled and refilled in a timely manner to avoid missed dosages; (3) Verifying that orders for medications have been accurately transcribed in the record of the medication administered to each resident in accordance with NAC 449.2744; (4) Monitoring the administration of medications and the effective use of the records of the medication administered to each resident; (5) Ensuring that each caregiver who administers a medication is in compliance with the requirements of subsection 6 of NRS 449.037 and NAC 449.196; (6) Ensuring that each caregiver who administers a medication is adequately supervised; (7) Communicating routinely with the prescribing physician or other physician of the resident concerning issues or observations relating to the administration of the medication;</p>	Y 871		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

JZC811

If continuation sheet 4 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 871	<p>Continued From page 4</p> <p>and</p> <p>(8) Maintaining reference materials relating to medications at the residential facility, including, without limitation, a current drug guide or medication handbook, which must not be more than 2 years old or providing access to websites on the Internet which provide reliable information concerning medications.</p> <p>(e) Develop and maintain a training program for caregivers of the residential facility who administer medication to residents, including, without limitation, an initial orientation on the plan for managing medications at the facility for each new caregiver and an annual training update on the plan. The administrator shall maintain documentation concerning the provision of the training program and the attendance of caregivers.</p> <p>This Regulation is not met as evidenced by: Based on record review, the administrator failed to ensure the facility's medication administration plan was followed.</p> <p>Findings include:</p> <p>On 4/3/15, a review of the facility's Medication Plan (undated), read as follows:</p> <p>Prevent the use of outdated, damaged or contaminated medications, Page 1, Section 1:</p> <p>-Bullet point #4: "Damaged, contaminated,</p>	Y 871		

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Y 871	<p>Continued From page 5</p> <p>discontinued medications will be destroyed according to medication Destruction Instruction [see Subsection 1]."</p> <p>Bullet point #7: "Upon moving out of the facility, all resident's medications will be transfer along with the resident."</p> <p>Bullet point #8: "All resident's medications will be destroyed according to Medication Destruction Instruction upon resident deceased."</p> <p>Medication Destruction Instruction, Page 1, Section 1, Subsection 1:</p> <p>Bullet point #1: "Medications that need to be destroyed shall be placed in an empty bottle, filled the bottle with either coffee or bleach, and shook to dissolved, and then discarded in the trash bin outside."</p> <p>Each resident's prescription medications and any over-the-counter drugs and supplements ordered for the resident are filled and refilled in a timely manner to avoid missed dosages; Medication procedures for all residents, Page 1, Section 2:</p> <p>Bullet point #1: "All new residents' medications must be in theirs original containers, original bubble packs, and original format."</p> <p>Bullet point #3: "Staff will make sure the resident have medication orders for all the medications. Make sure there are refills noted on the medication container or order. If not, the physician will have to be called to get a new order or setup a physician's visit."</p>	Y 871		

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Y 871	<p>Continued From page 6</p> <p>Bullet point #4: "Staff will ensure OTCs are labeled with the resident's name and prescribing physician name. If no physician's order for OTC, contact the physician's office."</p> <p>Bullet point #5: "Staff will add all prescribed medications, PRNs and OTC medication with physician's orders to the medication administration record (MAR)."</p> <p>Bullet point #6: "Staff will store all resident medications in a secured area or container and locked medicine cabinet."</p> <p>Bullet point #7: "The house manager or the assigned staff in charge is responsible for monitoring the status of all the residents' medications and the need to order refills."</p> <p>Bullet point #8: "One week prior to the last dose is given, a refill order will be called into the pharmacy, filling party such as the VA, or a reminder call to responsible resident's family member."</p> <p>Bullet point #9: "The facility's administrator will be notified a day prior to the last dose is given. The administrator will ensure the availability of the medicine to the resident."</p> <p>Bullet point #10: "Upon medications arrival to the facility, the Med Tech will be responsible for logging the MARs and ensuring the accuracy between the physician's order, the medication bottle's label, the medication and the MARs."</p> <p>Verification that medication orders have been accurately transcribed to Medication Administration records (MAR), Page 2, Section 3:</p>	Y 871		

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Y 871	<p>Continued From page 7</p> <p>Bullet point #1: "The Med Tech is responsible for transcribing medication orders onto the medication administration records (MARs) each month and anytime there is a change to the resident's medication regiments."</p> <p>Bullet point #2: "The Med Tech will make sure the dosage matches with the physician's order and also the time and amount to be taken is recorded accurately."</p> <p>Monitoring of medication administration and the effective use of the MARs for documentation, Page 2, Section 4:</p> <p>Bullet point #2: "The administrator is responsible for reviewing the MARs documented by Med Tech on a monthly basis."</p> <p>Staff who is responsible for administering medications is adequately supervised, Page 2, Section 6:</p> <p>Bullet point #1: "The administrator and/or house manager is responsible for the oversight of medication administration staff."</p> <p>Bullet point #2: "The administrator will observe in person how the medication is being administered."</p> <p>Routine communication of issues or observations related to the medication administration to the prescribing physician or other physician's; and, Page 3, Section 7:</p>	Y 871		

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Y 871	Continued From page 8 Bullet point #1: "The facility will communicate with resident physicians, if needed, through fax and/or by telephone." Bullet point #3: "The facility will inform the resident's physician when a resident misses or refuses to take his or her medication through fax or telephone." On 4/1/15, a review of residents' medications on-site, medication administration records and physician orders was conducted. Deficiencies cited may have been prevented had the facility adhered to it's medication management plan. Please see Tags Y885, Y886, Y895, Y920 and Y923. Severity: 2 Scope: 3	Y 871		
Y 878 SS=E	NAC 449.2742(5)(6) Medication / OTCs, Supplements, Change Order NAC 449.2742 Administration of medication: Responsibilities of administrator, caregivers and employees of facility. 5. An over-the-counter medication or a dietary supplement may be given to a resident only if the resident's physician has approved the administration of the medication or supplement in writing or the facility is ordered to do so by another physician. The over-the-counter medication or dietary supplement must be administered in accordance with the written instructions of the physician. The administration of over-the-counter medications and dietary supplements must be included in the record required pursuant to paragraph (b) of subsection	Y 878		

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Y 878	<p>Continued From page 9</p> <p>1 of NAC 449.2744.</p> <p>6. Except as otherwise provided in this subsection, a medication prescribed by a physician must be administered as prescribed by the physician. If a physician orders a change in the amount or times medication is to be administered to a resident:</p> <p>(a) The caregiver responsible for assisting in the administration of the medication shall:</p> <p>(1) Comply with the order;</p> <p>(2) Indicate on the container of the medication that a change has occurred; and</p> <p>(3) Note the change in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744;</p> <p>(b) Within 5 days after the change is ordered, a copy of the order or prescription signed by the physician must be included in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744; and</p> <p>(c) If the label prepared by a pharmacist does not match the order or prescription written by a physician, the physician, registered nurse or pharmacist must interpret that order or prescription and, within 5 days after the change is ordered, the interpretation must be included in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744.</p> <p>This Regulation is not met as evidenced by: Based on observation, record review and interview, the facility failed to ensure 4 of 10 residents received medications as prescribed per physician order (Residents #2, #5, #6 and #9). The facility failed to ensure 1 of 10 residents' medications received a change order indication on the medication container after a physician changed the existing medication order (Resident</p>	Y 878		

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Y 878	<p>Continued From page 10</p> <p>#10). The facility failed to ensure 3 of 10 residents' records had physician orders for medications (Residents #5, #6 and #9).</p> <p>Findings include:</p> <p>Resident #2: Physician order read: Albuterol 2.5 milligrams (mg)/3 mL (milliliters) (0.083%) inhalation solution, 3 mL nebulizer every 4 hours as needed for shortness of breath or wheezing. The medication was not on-site. On 4/1/15 at 3:45 PM, Employees #1 and #2 explained they did not know about the medication order. On 4/1/15 at 3:57 PM, Resident #2 explained they were not aware the medication had been ordered by the physician.</p> <p>Resident #5: Review of the MAR, medications on-site and physician orders revealed the following:</p> <p>-Cranberry 425 milligrams (mg), take 2 capsules (850 mg) by mouth every day. The medication was signed as administered on 4/1/15 at 8:00 AM. The medication was not on-site. On the March, 2015 MAR, the medication was listed on the MAR, crossed out, and a note indicated "Double Entry, page 2". A physician order was found in the record dated 10/21/14, with no order to discontinue the medication.</p> <p>-Cranberry 200 mg, take 2 capsules (400 mg) by mouth twice daily. The medication was not signed as administered for the 4/1/15, 8:00 AM dose. Two bottles of the medication were on-site. No physician order was found in the record.</p> <p>-Hydrocodone/APAP 5-325 mg, take 1 tablet by mouth three times daily as needed for pain. The medication was on-site. No physician order or</p>	Y 878		

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Y 878	<p>Continued From page 11</p> <p>discontinue order was found in the record for this frequency. Hydrocodone/APAP 5-325 mg, take 1 tablet by mouth twice daily. The medication was on-site. A physician order dated 2/24/15 was found in the record.</p> <p>Resident #6: Review of the March and April 2015 MARs revealed the following medication was not listed on the MARs: DocQLace 100 mg, take 1 capsule by mouth every day. Prescription was filled on 3/20/15. The physician order was dated 4/1/15. No other order for the medication was found in the record. The medication was not administered as prescribed.</p> <p>Resident #9: Review of the MAR, medications on-site, and physician orders revealed the following:</p> <ul style="list-style-type: none"> - Potassium Chloride 10 MEQ ER, take 1 capsule by mouth daily. The medication was listed on the April 2015 MAR, and was signed as administered on 4/1/15. The medication was not listed on the March 2015 MAR. The medication was on-site and was filled on 3/25/15. No physician order was found in the record. - Also listed on the April 2015 MAR was Pot CL Micro Tab 10 MEQ ER, take 1 tablet by mouth every day. The medication was signed as administered on 4/1/15. The medication was not listed on the March 2015 MAR. The medication was on-site and was filled on 3/3/15. A physician order for 3/3/15 was found in the record. <p>Resident #10: The MAR and physician order read: Hydrocodone/APAP 5-325 mg, take 2</p>	Y 878		

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Y 878	Continued From page 12 tablets by mouth three times daily as needed for pain. The medication on-site read: Hydrocodone/APAP 5-325 mg, take 2 tablets by mouth every six hours as needed for pain. There was no change order label on the medication container. Severity: 2 Scope: 2	Y 878		
Y 885 SS=D	449.2742(9) Medication / Destruction NAC 449.2742 Administration of medication: Responsibilities of administrator, caregivers and employees of facility. 9. If the medication of a resident is discontinued, the expiration date of the medication of a resident has passed, or a resident who has been discharged from the facility does not claim the medication, an employee of a residential facility shall destroy the medication, by an acceptable method of destruction, in the presence of a witness and note the destruction of the medication in the record maintained pursuant to NAC 449.2744. This Regulation is not met as evidenced by: Based on observation and interview, the facility failed to destroy medications after they were discontinued, had expired or after a resident had been discharged. for 3 of 12 residents (Resident #9 - sampled resident and Residents #11 and #12 - unsampled residents).	Y 885		

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Y 885	Continued From page 13 Findings include: On 4/1/15, a review of resident medications revealed the following: Resident #9: One bottle of Vitamin B-12 , discontinued by the resident's physician on 2/24/15, was still on-site. Resident #11 - One bottle of Vitamin B-12, prescribed for a resident who had been discharged from the facility, was still on-site. Resident #12 - Nine Mediclophan suppositories, prescribed for a resident who had been discharged from the facility, were still on-site. On 4/1/15 at 5:05 PM, the Administrator acknowledged the medications should have been destroyed. Severity: 2 Scope: 1	Y 885		
Y 895 SS=B	449.2744(1)(b 1-4)+449.2746(2) Medication / MAR-PRN MAR NAC 449.2744 Administration of medication: Maintenance and contents of logs and records. 1. The administrator of a residential facility that provides assistance to residents in the administration of medication shall maintain: (b) A record of the medication administered to each resident. The record must include:	Y 895		

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Y 895	<p>Continued From page 14</p> <p>(1) The type of medication administered; (2) The date and time that the medication was administered; (3) The date and time that a resident refuses, or otherwise misses, an administration of medication; and (4) Instructions for administering the medication to the resident that reflect each current order or prescription of the resident's physician.</p> <p>NAC 449.2746 (Refer to NAC 449.2742(5) The administration of over-the-counter medications and dietary supplements must be included in the record required pursuant to paragraph (b) of subsection 1 of NAC 449.2744.)</p> <p>2. A caregiver who administers medication to a resident as needed shall record the following information concerning the administration of the medication:</p> <p>(a) The reason for the administration; (b) The date and time of the administration; (c) The dose administered; (d) The results of the administration of the medication; (e) The initials of the caregiver; and (f) Instructions for administering the medication to the resident that reflect each current order or prescription of the resident's physician.</p> <p>This Regulation is not met as evidenced by: Based on record review and interview, the facility failed to ensure the medication administration record (MAR) was accurate for 5 of 10 MARs that were inspected (Residents #3, #5, #6, #9 and #10).</p> <p>Findings include:</p>	Y 895		

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Y 895	<p>Continued From page 15</p> <p>Resident #3: Review of the MAR revealed the following medications were not signed as administered: -8:00 PM dose of Temazepam on 3/31/15 -12:00 AM (midnight) dose of Hydrocodone/APAP on 3/31/15 -PM dose of Mexiletine on 3/31/15</p> <p>On 4/1/15 at 2:25 PM, Resident #3 confirmed they received the medications.</p> <p>Resident #5: Review of the MAR revealed the following medications were not signed as administered: -8:00 PM dose of Trazadone on 3/31/15 -8:00 PM dose of Hydrocodone/APAP on 3/31/15</p> <p>Review of the MAR revealed the following medications were listed on the MAR twice: -Cranberry 425 milligrams (mg), take 2 capsules (850 mg) by mouth every day. The medication was signed as administered on 4/1/15 at 8:00 AM. The medication was not on-site. On the March, 2015 MAR, the medication was listed on the MAR, crossed out, and a note indicated "Double Entry, page 2". A physician order was found in the record dated 10/21/14, with no order to discontinue the medication.</p> <p>-Cranberry 200 mg, take 2 capsules (400 mg) by mouth twice daily. The medication was not signed as administered for the 4/1/15, 8:00 AM dose. Two bottles of the medication were on-site. No physician order was found in the record.</p>	Y 895		

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NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 895	<p>Continued From page 16</p> <p>-Hydrocodone/APAP 5-325 mg, take 1 tablet by mouth twice daily for pain. The medication was not signed as administered for the 4/1/15, 8:00 AM dose. Physician order dated 2/24/15 was found in the record. The medication was on-site.</p> <p>-Hydrocodone/APAP 5-325 mg, take 1 tablet by mouth three times daily as needed for pain. No physician order or discontinue order was found in the record. The medication was on-site. No change order label was on the medication container.</p> <p>Resident #6: Review of the March and April 2015 MARs revealed the following medication was not listed on the MARs: -DocQLace 100 mg, take 1 capsule by mouth every day. The physician order was dated 4/1/15. Prescription was filled on 3/20/15. Medication was on sight.</p> <p>Resident #9: Review of the MAR revealed the following medication documentation discrepancies:</p> <p>- Alendronate 70 mg, take 1 tablet by mouth every Sunday a half hour prior to meal as directed. The medication was noted on the March 2015 MAR as discontinue on 3/3/15. The medication was still on-site.</p> <p>No discontinue order was found in the record. A hospice visit note from 3/3/15 indicated Alendronate 40 mg was discontinued on 3/3/15.</p> <p>- Methadone SOL 5 mg/5 ml, take 1 ml (1 mg) three times a day, routine for pain. The medication was not signed as administered for the 12:00 PM</p>	Y 895		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

JZC811

If continuation sheet 17 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 895	<p>Continued From page 17</p> <p>dose on 4/1/15. On 4/1/15 at 4:10 PM, Employee #2 explained they did administer the medication to the resident.</p> <p>- Non-Aspirin Acetamin 325 mg, take 2 tablets by mouth every 6 hours as needed for pain, headache, fever. The medication was listed on the April 2015 MAR. Physician order was found in the record. The medication was on-site. Also listed on the April 2015 MAR was Acetamin 325 mg, take 2 tablets by mouth three times a day as needed for pain. No change order label was on the medication container.</p> <p>- Morphine IR 20 mg/mL Soln, take 0.5 mg (10 mg) by mouth under the tongue every one hours as needed for pain or shortness of breath. The medication was not listed on the April 2015 MAR. Physician order dated 3/3/15 was found in the record. The medication was on-site.</p> <p>- Pot Chloride 10 MEQ ER, take 1 capsule by mouth daily. The medication was listed on the April 2015 MAR, and was signed as administered on 4/1/15. The medication was not listed on the March 2015 MAR. The medication was on-site and was filled on 3/25/15. Also listed on the April 2015 MAR was Pot CL Micro Tab 10 MEQ ER, take 1 tablet by mouth every day. The medication was signed as administered on 4/1/15. The medication was not listed on the March 2015 MAR. The medication was on-site and was filled.</p> <p>-Bisac-Evac suppositories 10 mg, unwrap and insert 1 suppository per rectum every day as needed if no bowel movement for 3 days. The medication was not listed on the April 2015 MAR.</p>	Y 895		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

JZC811

If continuation sheet 18 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 895	Continued From page 18 Resident #10: Review of April 2015 MAR revealed the following medication was not listed on the MAR: Bisacodyl 10 mg suppositories, unwrap and insert 1 suppository rectally every day as needed for constipation. The physician order was dated 1/18/15. On 4/1/15 at 5:05 PM, the Administrator acknowledged the medication documentation errors. Severity: 2 Scope: 2	Y 895		
Y 920 SS=F	449.2748(1-2) Medication Storage NAC 449.2748 Medication: Storage; duties upon discharge, transfer and return of resident. 1. Medication, including, without limitation, any over-the-counter medication, stored at a residential facility must be stored in a locked area that is cool and dry. The caregivers employed by the facility shall ensure that any medication or medical or diagnostic equipment that may be misused or appropriated by a resident or any other unauthorized person is protected. Medication for external use only must be kept in a locked area separate from other medications. A resident who is capable of administering medication to himself without supervision may keep his medication in his room if the medication is kept in a locked container for which the facility has been provided a key.	Y 920		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

JZC811

If continuation sheet 19 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 920	<p>Continued From page 19</p> <p>2. Medication stored in a refrigerator, including, without limitation, any over-the-counter medication must be kept in a locked box unless the refrigerator is locked or is located in a locked room.</p> <p>This Regulation is not met as evidenced by: Based on observation, record review and interview, the facility failed to ensure that medications were stored in a locked area.</p> <p>Findings include:</p> <p>On 4/1/15 during a facility tour in the afternoon, medications for all of the facility's residents were observed unsecured in the kitchen pantry. The pantry had a locking door, however the door was not locked. The key to the door was observed in an unlocked kitchen drawer next to the refrigerator.</p> <p>On 4/1/15 during a facility tour in the afternoon, the following unsecured medications were observed in the closet of Resident #6's room:</p> <ul style="list-style-type: none"> - One bottle of Vitamin B-12, prescribed for a resident who had been discharged from the facility. - One bottle of Vitamin B-12, prescribed for Resident #9, discontinued by the resident's physician on 2/24/15. - One large bottle of unlabeled Vitamin C. <p>On 4/1/15 at 1:15 PM, Employee #1 acknowledged the unlocked medications stored in the kitchen pantry. Employee #2 explained all of the unsecured medications found in Resident #6's room belonged to the employee.</p>	Y 920		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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JZC811

If continuation sheet 20 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 920	Continued From page 20	Y 920		
Y 923 SS=D	<p>Severity: 2 Scope: 3</p> <p>449.2748(3)(a-b) Medication Container</p> <p>NAC 449.2748 Medication: Storage; duties upon discharge, transfer and return of resident.</p> <p>3. Medication including, without limitation, any over-the-counter-medication or dietary supplement, must be:</p> <p>(a) Plainly labeled as to its contents, the name of the resident for whom it is prescribed and the name of the prescribing physician; and</p> <p>(b) Kept in its original container until it is administered.</p> <p>This Regulation is not met as evidenced by: Based on observation, record review and interview, the facility failed to ensure medications were properly labeled and kept in the original containers for 1 of 10 residents (Resident #10).</p> <p>Findings include:</p> <p>On 4/1/15 during a review of resident medications, an unlabeled prescription bottle containing white pills was observed in Resident #10's medication bin. The white cap on the bottle was marked in pen with "ASA 81 milligrams (mg)".</p>	Y 923		

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STATE FORM

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JZC811

If continuation sheet 21 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 923	Continued From page 21 On 4/1/15, review of Resident #10's medication administration record (MAR) revealed the resident was prescribed Aspirin 81 mg. On 4/1/15 at 3:45 PM, the Administrator acknowledged the medication was not properly labeled and the medication was not stored in its original container. Severity: 2 Scope: 1	Y 923		
Y 930 SS=C	449.2749(1)(a) Resident File-Storage, Res Information NAC 449.2749 Maintenance and contents of separate file for each resident; confidentiality of information. 1. A separate file must be maintained for each resident of a residential facility and retained for at least 5 years after he permanently leaves the facility. The file must be kept locked in a place that is resistant to fire and is protected against unauthorized use. The file must contain all records, letters, assessments, medical information and any other information related to the resident, including without limitation: (a) The full name, address, date of birth and social security number of the resident. This Regulation is not met as evidenced by: Based on observation and interview, the facility failed to ensure resident files were kept in a secured location for 10 of 10 residents (Residents #1, #2, #3, #4, #5, #6, #7, #8, #9 and #10).	Y 930		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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JZC811

If continuation sheet 22 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 930	Continued From page 22 Findings include: On 4/1/15 during a facility tour in the afternoon, ten resident files were observed in an unlocked kitchen cabinet. On 4/1/15 at 2:45 PM, Employee #1 acknowledged the unlocked files. Severity: 1 Scope: 3	Y 930		
Y 936 SS=D	449.2749(1)(e) Resident file-NRS 441A Tuberculosis NAC 449.2749 Maintenance and contents of separate file for each resident; confidentiality of information. 1. A separate file must be maintained for each resident of a residential facility and retained for at least 5 years after he permanently leaves the facility. The file must be kept locked in a place that is resistant to fire and is protected against unauthorized use. The file must contain all records, letters, assessments, medical information and any other information related to the resident, including without limitation: (e) Evidence of compliance with the provisions of chapter 441A of NRS and the regulations adopted pursuant thereto. This Regulation is not met as evidenced by: Based on record review and interview, the facility failed to ensure 1 of 10 residents met the requirements concerning tuberculosis (TB) testing (Resident #10). Findings include:	Y 936		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

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JZC811

If continuation sheet 23 of 24

Division of Public and Behavioral Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: NVS7555AGC	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 04/01/2015
NAME OF PROVIDER OR SUPPLIER BELLA ESTATE CARE HOME		STREET ADDRESS, CITY, STATE, ZIP CODE 3140 COACHLIGHT CIRCLE LAS VEGAS, NV 89117		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
Y 936	<p>Continued From page 23</p> <p>On 4/1/15, a review of resident files revealed Resident #10 was admitted to the facility on 1/9/15. The file lacked documented evidence of a two-step TB test.</p> <p>On 4/1/15 at 5:05 PM, the Administrator acknowledged the missing TB test documentation</p> <p>This was a repeat deficiency from the 4/2/14 annual State Licensure grading survey.</p> <p>Severity: 2 Scope: 1</p>	Y 936		

If deficiencies are cited, an approved plan of correction must be returned within 10 days after receipt of this statement of deficiencies.

STATE FORM

6899

JZC811

If continuation sheet 24 of 24

Exhibit 4

1 **BEFORE THE NEVADA STATE BOARD OF EXAMINERS**
2 **FOR LONG TERM CARE ADMINISTRATORS**
3

4 In the Matter of the Complaint for)
5 Disciplinary Action Against)
6 DANIELLE A. WALTON,)
7 RESPONDENT)
8 Residential Facility Administrator for)
9 BELLA ESTATES CARE HOME)
10 _____)

Case No. B-36122

Filed: _____

Executive Director

11
12 **STIPULATION FOR SETTLEMENT OF DISCIPLINARY ACTIONS**

13 WHEREAS, as more fully addressed below, the NEVADA STATE BOARD OF
14 EXAMINERS OF LONG TERM CARE ADMINISTRATORS, ("BOARD"), and RESPONDENT
15 DANIELLE A. WALTON ("RESPONDENT" or "WALTON") (collectively referred to as "the
16 Parties"), hereby enter into this Stipulation for Settlement of Disciplinary Actions as follows:

17 **Jurisdiction**

- 18 1. Pursuant to Nevada Revised Statute 654.110(1)(f), the BOARD has jurisdiction to
19 receive, investigate and take appropriate action with respect to any charge or
20 complaint filed with the BOARD against a licensee.
21
22 2. RESPONDENT at all times relevant hereto, was and currently is, licensed in the
23 State of Nevada as a residential facility administrator ("RFA") by the BOARD,
24 pursuant to the provisions of Nevada Revised Statutes and Nevada Administrative
25 Code chapters 654.
26
27 3. At all times relevant hereto, RESPONDENT was the Administrator of BELLA
28 ESTATES CARE HOME, 3140 Coachlight Circle, Las Vegas, NV 89117 ("the

Facility”), License No. 9304, and as a result of such licensure, his/her conduct in the capacity of a licensee was and is governed by Nevada Revised Statutes Chapter 654, Nevada Administrative Code 654, and other provisions of Nevada law.

4. Pursuant to Nevada Revised Statute 233B.121(5), the BOARD is authorized to enter into a settlement agreement to resolve a disputed matter.

Allegations

5. On or about April 1, 2015 the State of Nevada, Division of Public and Behavioral Health (“DPBH”) conducted an annual State Licensure survey and complaint investigation at Bella Estate Care Home and subsequently DPBH issued its Statements of Deficiencies (“SOD”) against the Facility.
6. On or about June 19, 2015, the BOARD sent a “Notice Pursuant to Nevada Revised Statutes (“NRS”) 233B.127(3) of Intent to Take Administrative Action for Violations of Chapter 654 of NRS and Chapter 449 of NRS” to RESPONDENT, by certified mail, notifying him or her of an investigation concerning allegations of Chapter 654 violations.
7. On July 8, 2015, the Board sent correspondence to RESPONDENT, by certified mail, notifying RESPONDENT that sufficient evidence had been found for disciplinary action to be commenced, and that the BOARD proposed such action would be brought for an administrative hearing.
8. Respondent acknowledges that information has been received by the BOARD or its agent, which constitutes sufficient grounds for the initiation of an administrative hearing.
9. The Parties desire to resolve any disputed matters relating to the BOARD’S investigation, and recognize that continued litigation of this dispute would be protracted, costly and time consuming, and therefore, the Parties have reached a

1 settlement agreement in the interest of judicial and administrative economy.

2 **Violations of Law**

- 3 10. RESPONDENT admits that the conduct set forth in the DPBH survey and/or
4 complaint investigation constitutes a violation of law regulating the practice of
5 residential facility administrators and/or skilled nursing administrators.
6 RESPONDENT has elected to enter into this settlement agreement rather than
7 face the possibility of further disciplinary action by the BOARD.

8 **Administrative Penalty**

- 9
10 11. RESPONDENT shall maintain a grade of B or better for all of his/her facilities for the
11 eighteen (18) months immediately following the Effective Date of the Board's Final
12 order, and agrees that if licensee receives a grade below a B, his/her license shall
13 be immediately suspended until he/she comes before the Board at the next
14 Quarterly Board Meeting. Respondent shall also complete Modules 1 and 4 of the
15 Nevada Best Practices Training to be provided by the Board and 8 hours of
16 Medication Training within thirty (30) days after the Effective Date of the Board's
17 Final Order, and pay the following monetary assessment to the BOARD:

18	Administrative Fine:	\$	3,000.00
19	Best Practices Training:		100.00
20	Administrative & Legal Costs:		<u>375.00</u>
21	Total Assessed:	\$	<u>3,475.00</u>

- 22
23
24 12. RESPONDENT shall pay to the BOARD the total sum of \$3,475.00, in twelve (12)
25 installments consisting of the first payment being ten (10) percent of the total
26 balance equaling \$347.48 and eleven (11) equal monthly installment payments
27 \$284.32 thereafter.
28

- 1 13. The first payment of \$347.48 is due and payable within thirty (30) days after the
2 EFFECTIVE DATE of the BOARD'S Final Order, with eleven (11) additional
3 installment payments of \$284.32, each installment payment becoming due and
4 payable on the 15th day of each next succeeding month after the first payment, until
5 the total balance due is paid in full. No grace period will be permitted. Any
6 installment payment not actually received by the BOARD on or before its due date
7 shall be construed as an event of default of this agreement by the RESPONDENT.
8
- 9 14. Any installment payment not actually received by the BOARD on or before its due
10 date shall be subjected to a Fifty Dollar (\$50.00) late fee.
- 11 15. If monthly installments are not brought current within thirty (30) days of due date,
12 the remaining unpaid balance shall become immediately accelerated, and the total
13 remaining unpaid balance of the monetary assessments shall become immediately
14 due and payable in full. In such event, debt collection actions for unpaid monetary
15 assessments in this case may be instituted by the BOARD.
- 16 16. In the event of default, **RESPONDENT agrees that his/her license shall be**
17 **immediately suspended.** The suspension of RESPONDENT'S license shall
18 continue until the unpaid balance is paid in full.
- 19 17. RESPONDENT acknowledges that the BOARD has the legal power and authority to
20 take action against her/him, including instituting debt collection actions for unpaid
21 monetary assessments in this case.
- 22 18. RESPONDENT acknowledges that the BOARD will retain jurisdiction over this
23 matter until all terms and conditions set forth in this settlement agreement have
24 been met to the satisfaction of the BOARD.
- 25 19. The BOARD agrees not to pursue any other or greater remedies or fines in
26 connection RESPONDENT'S alleged conduct, and that once this agreement is fully
27
28

1 agreement, if after review by the BOARD, this settlement agreement is rejected.

2 31. If the BOARD does not accept the settlement agreement, it shall be regarded as
3 null and void. Admissions by RESPONDENT in the settlement agreement will not
4 be regarded as evidence against him at the subsequent disciplinary hearing. The
5 RESPONDENT will be free to defend himself and no inferences against him will be
6 made from his willingness to have entered into this agreement.
7

8 ...
9 ...
10 ...
11
12
13 **Complete Agreement**

14 32. This settlement agreement consists of eight pages and embodies the entire
15 agreement between the BOARD and RESPONDENT. It may not be altered,
16 amended or modified without the express consent of the parties.
17

18 Date: 8/6/15

Date: _____
NEVADA STATE BOARD OF
EXAMINERS OF LONG TERM CARE
ADMINISTRATORS

19
20
21 By: 
22 Danielle A. Walton
Licensee

23
24
25 By: _____
26 Sandy Lampert
27 Executive Director
28

Exhibit 5

REGISTER OF ACTIONS**CASE NO. A-19-797533-C****Corinne DiLeo, Plaintiff(s) vs. Maide, LLC, Defendant(s)**§
§
§
§
§
§Case Type: **Negligence - Other
Negligence**Date Filed: **06/27/2019**Location: **Department 14**Cross-Reference Case Number: **A797533****PARTY INFORMATION**

Defendant	Huch, Sokhena K	Lead Attorneys Stephen B. Vogel <i>Retained</i> 702-893-3383(W)
Defendant	Maide, LLC <i>Doing Business As</i> Gentle Spring Care Home	Stephen B. Vogel <i>Retained</i> 702-893-3383(W)
Defendant	Ton, Miki N	Stephen B. Vogel <i>Retained</i> 702-893-3383(W)
Plaintiff	DiLeo, Cindy	Jamie S. Cogburn <i>Retained</i> 702-748-7777(W)
Plaintiff	DiLeo, Corinne R	Jamie S. Cogburn <i>Retained</i> 702-748-7777(W)
Plaintiff	DiLeo, Thomas, Jr.	Jamie S. Cogburn <i>Retained</i> 702-748-7777(W)
Plaintiff	Estate of Thomas DiLeo	Jamie S. Cogburn <i>Retained</i> 702-748-7777(W)

EVENTS & ORDERS OF THE COURT

01/28/2020 **Motion to Compel** (9:30 AM) (Judicial Officer Thompson, Charles)
Maide, L.L.C, a Nevada Limited-Liability Company d/b/a Gentle Spring Care Home; Sokhena K. Huch, an Individual; Miki N. Ton's Motion to Compel Arbitration

Minutes

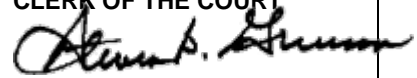
12/17/2019 9:30 AM

01/28/2020 9:30 AM

01/28/2020 9:30 AM

- Arguments by counsel regarding whether or not the heirs of the estate should be bound to binding arbitrations. COURT ORDERED, motion is GRANTED as to the estate only, and STAYED as to the heirs.

[Parties Present](#)[Return to Register of Actions](#)



1 S. BRENT VOGEL
Nevada Bar No. 06858
2 Brent.Vogel@lewisbrisbois.com
JOHN M. ORR
3 Nevada Bar No. 14251
John.Orr@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, NV 89118
Tel.: 702.893.3383
6 Fax: 702.893.3789

7 *Attorneys for Defendants*

8 *Maide, LLC d/b/a Gentle Spring Care Home,*
9 *Sokhena K. Huch, and Miki N. Ton*

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 CORINNE R. DILEO as Special
13 Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR., as Statutory
14 Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
15 DILEO,

16 Plaintiffs,

17 vs.

18 MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
19 HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
20 INDIVIDUALS 1-10, inclusive; ROE
ENTITIES 11-20, inclusive,

21 Defendants.
22

CASE NO. A-19-797533-C

DEPT. NO. 14

NOTICE OF ENTRY OF ORDER

23 ...

24 ...

25 ...

26 ...

27 ...

1 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-
2 captioned matter on the 7th day of April, 2020, a copy of which is
3 attached hereto.
4

5 DATED this 22nd day of April, 2020

6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7
8

9 By /s/ John M. Orr

10 S. BRENT VOGEL

11 Nevada Bar No. 6858

12 JOHN M. ORR

13 Nevada Bar No. 14251

14 6385 S. Rainbow Boulevard, Suite 600

15 Las Vegas, Nevada 89118

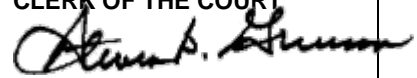
16 Tel. 702.893.3383
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2020, a true and correct copy of **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

By /s/ Roya Rokni
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP



1 S. BRENT VOGEL
Nevada Bar No. 06858
2 Brent.Vogel@lewisbrisbois.com
JOHN M. ORR
3 Nevada Bar No. 14251
John.Orr@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, NV 89118
Tel.: 702.893.3383
6 Fax: 702.893.3789

7 *Attorneys for Defendants*

8 *Maide, LLC d/b/a Gentle Spring Care Home,*
9 *Sokhena K. Huch, and Miki N. Ton*

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 CORINNE R. DILEO as Special
13 Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR., as Statutory
14 Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
15 DILEO,

16 Plaintiffs,

17 vs.

18 MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
19 HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
20 INDIVIDUALS 1-10, inclusive; ROE
ENTITIES 11-20, inclusive,

21 Defendants.
22

CASE NO. A-19-797533-C

DEPT. NO. 14

**ORDER ON DEFENDANTS' MOTION TO
COMPEL ARBITRATION**

23 ...

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1 The above-entitled matter having come on for hearing upon Defendants Maide,
2 LLC, Sokhena Huch, and Miki Ton's (collectively referred to as "Defendants") Motion to
3 Compel Arbitration on January 28, 2020. Defendants, appearing by and through John M.
4 Orr, Esq. and Plaintiffs Cindy Dileo, as the Administrator of the Estate of Thomas Dileo
5 (the "Estate"), Thomas Dileo, Jr., an heir of Thomas Dileo, and Cindy Dileo, an heir of
6 Thomas Dileo (Thomas Dileo, Jr. and Cindy Dileo collectively referred to as the "Heirs"),
7 appeared by and through Hunter Davidson, Esq. The Court having reviewed the
8 pleadings and papers on file, being fully advised in the premises, having heard the oral
9 argument of counsel and good cause appearing therefore, the Court finds as follows:

10 The Court finds Corinne Dileo executed a valid arbitration agreement (the
11 "Agreement") on behalf of Thomas Dileo on January 30, 2015, when Mr. Dileo became a
12 resident at Gentle Spring Care Home. On June 27, 2019, Plaintiffs Corinne Dileo, Thomas
13 Dileo, Jr., and Cindy Dileo, filed a Complaint against Defendants, asserting claims under
14 NRS § 41.1395 ("Elder Abuse"), NRS 48.105 ("Wrongful Death"), and for Negligence
15 under NRS § 41.100. Cindy and Thomas Dileo, Jr. were not signatories to the
16 Agreement.

17 The Supreme Court of Nevada has held "[g]enerally, arbitration is a matter of
18 contract and a party cannot be required to submit to arbitration any dispute which he has
19 not agreed so to submit" *Truck Ins. Exchange v. Swanson*, 124 Nev. 629, 634, 189 P.3d
20 656, 550 (2008). A nonsignatory "may be bound to an arbitration agreement if so dictated
21 by the 'ordinary principles of contract and agency...[:]' (1) incorporation by reference; (2)
22 assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel." *Id.*

23 NRS 38.221 further provides a specific framework with which this Court must
24 analyze whether a dispute is subject to arbitration:

25 NRS § 38.221 Motion to compel or stay arbitration.

26 1. On motion of a person showing an agreement to arbitrate
27 and alleging another person's refusal to arbitrate pursuant to
28 the agreement:

1 (a) If the refusing party does not appear or does not oppose
2 the motion, the court shall order the parties to arbitrate; and

3 (b) If the refusing party opposes the motion, the court shall
4 proceed summarily to decide the issue and order the parties
5 to arbitrate unless it finds that there is no enforceable
6 agreement to arbitrate.

7 2. On motion of a person alleging that an arbitral proceeding
8 has been initiated or threatened but that there is no
9 agreement to arbitrate, the court shall proceed summarily to
10 decide the issue. If the court finds that there is an enforceable
11 agreement to arbitrate, it shall order the parties to arbitrate.

12 3. If the court finds that there is no enforceable agreement, it
13 may not, pursuant to subsection 1 or 2, order the parties to
14 arbitrate.

15 . . .

16 . . .

17 6. If a party makes a motion to the court to order arbitration,
18 the court on just terms shall stay any judicial proceeding that
19 involves a claim alleged to be subject to the arbitration until
20 the court renders a final decision under this section.

21 7. If the court orders arbitration, the court on just terms shall
22 stay any judicial proceeding that involves a claim subject to
23 the arbitration. If a claim subject to the arbitration is
24 severable, the court may limit the stay to that claim.

25 NRS 38,221(1)-(3), (6)-(7).

26 The Estate's claims for Wrongful Death, Elder Abuse, and Negligence are subject
27 to Arbitration because Corrinne Dileo, as the special administrator of the Estate,
28 "succeeds to the rights and obligations of the Estate's decedent, effectively stepping into
the shoes of the decedent." *Colo. Nat'l Bank of Denver v. Friedman*, 846 P.2d 159, 163
(Colo. 1993). The Heirs "not have standing to assert an elder abuse or negligence claim."
Echevarria v. Echevarria, No. 66618, 2015 WL 7431757 (Nov. 19, 2015) ("nothing in NRS
41.085 authorizes an heir to maintain an action for elder abuse or neglect on behalf of a
decedent."); NRS 41.100(1) ("[e]xcept as otherwise provided in this section, no cause of
action is lost by reason of the death of any person, but may be maintained by or against
the person's executor or administrator.").

1 The Court finds that there is no evidence the Heirs are bound to the Agreement
2 by virtue of other principles of contract law, i.e., estoppel, assumption, agency. Under
3 NRS 38.221(1), there is not a valid agreement to arbitrate between the Heirs and
4 Defendants.

5 The Court does find as a matter of law that there is a valid agreement to arbitrate
6 between the Estate and Defendants.

7 The Court, having considered the arguments of counsel, and good cause
8 appearing, hereby finds and orders as follows:

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Corinne R.
10 Dileo's, as Special Administrator for the Estate of Thomas Dileo, claims against
11 Defendants for Elder Abuse, Negligence, and Survival Action be referred to binding
12 Arbitration pursuant to the Resident Agreement Addendum attached to Defendants'
13 Motion.

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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs Thomas
2 Dileo, Jr. and Cindy Dileo's, as statutory heirs to Thomas Dileo, individual claims against
3 Defendants for Wrongful Death are stayed during the pendency of the binding arbitration.

4 IT IS SO ORDERED

5 DATED this 3rd day of ^{AE}April ~~March~~, 2020.

6
7 
8 _____
9 DISTRICT COURT JUDGE

8 Submitted By:

9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10

11

By: /s/ John M. Orr

12 S. Brent Vogel, Esq.

John M. Orr, Esq.

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

Attorneys for Defendant

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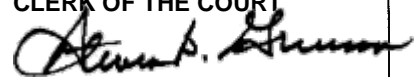
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28



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 Brent.Vogel@lewisbrisbois.com
JOHN M. ORR
3 Nevada Bar No. 14251
John.Orr@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
Attorneys for Defendants Maide, L.L.C, d/b/a Gentle Spring Care Home,
7 *Sokhena K. Huch, and Mikin Ton*

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

11 CORINNE R. DILEO as Special
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12 DILEO; THOMAS DILEO, JR., as Statutory
Heir to THOMAS DILEO; and CINDY
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15 vs.

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18 MIKI N. TON, an individual; DOE
INDIVIDUALS 1-10, inclusive; ROE
19 ENTITIES 11-20, inclusive,

20 Defendants.

CASE NO. A-19-797533-C
Dept. No.: 1

**MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
HOME, and SOKHENA K. HUCH, and
MIKI N. TON's OPPOSITION TO
PLAINTIFFS' MOTION FOR
REHEARING**

21 Defendants MAIDE, L.L.C d/b/a GENTLE SPRING CARE HOME; SOKHENA K.
22 HUCH, and MIKI N. TON (collectively referred to as "Defendants"), by and through their
23 attorneys of record, S. Brent Vogel, Esq. and John M. Orr, Esq. of the Law Firm LEWIS
24 BRISBOIS BISGAARD & SMITH, hereby file this Reply in Support of Defendants' Motion to
25 Compel Arbitration.

26 This Opposition is based upon the papers and pleadings on file in this case, the attached
27 exhibits, the Memorandum of Points and Authorities submitted herewith, and any argument made
28

1 at the time of hearing in this matter.

2 DATED this 5th day of May, 2020.

3
4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5 By /s/ John M. Orr

6 S. BRENT VOGEL

7 Nevada Bar No. 6858

8 JOHN M. ORR

9 Nevada Bar No. 14251

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

10 *Attorneys for Defendants, The Heights of Summerlin,*
11 *LLC*

12 **MEMORANDUM OR POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 Plaintiffs' Motion for Reconsideration (the "Motion") should be denied. The Court's initial
15 ruling on Defendants' Motion to Compel Arbitration was correct when it was decided. It is correct
16 now. A copy of the Court's signed Order is attached hereto as **Exhibit "A."** Plaintiffs' Motion for
17 Reconsideration is based on the sole premise that the Court's initial ruling was clearly erroneous.
18 There is no legal or rational basis to conclude that the Court's initial ruling is incorrect. Plaintiffs
19 argue that the arbitration agreement (the "Agreement") is an "entirely separate agreement that
20 lacks NRS 597.995's specific authorization." They suggest that because the Agreement contains a
21 clause regarding "grievances" and another clause regarding "arbitration," Corinne Dileo's
22 signature at the bottom of the Agreement does not constitute a specific authorization as required
23 by NRS 597.995(1). As set forth below, this argument lacks any legal support and disregards the
24 practical purpose of NRS 597.995. In addition to the proceeding arguments, Defendants
25 incorporate by reference all arguments made in their initial briefing on this issue. A copy of
26 Defendants' Reply in Support of their Motion to Compel Arbitration (the "Reply") is attached
27 hereto as **Exhibit "B."**

1 **II. LEGAL ARGUMENT**

2 **a. The Agreement Contains a Specific Authorization As Required By NRS 597.995**

3 NRS § 597.995(1) provides:

4 1. Except as otherwise provided in subsection 3, an agreement
5 which includes a provision which requires a person to submit to
6 arbitration any dispute arising between the parties to the agreement
must include specific authorization for the provision which indicates
that the person has affirmatively agreed to the provision.

7 2. If an agreement includes a provision which requires a person to
8 submit to arbitration any dispute arising between the parties to the
9 agreement and the agreement fails to include the specific
10 authorization required pursuant to subsection 1, the provision is void
and unenforceable.

11 NRS § 597.995(1)–(2). In *Fat Hat, LLC v. DiTerlizzi*, No. 68479, 2016 Nev. Unpub. LEXIS 762,
12 at *4–*5 (Nev. Sept. 21, 2016), the Supreme Court of Nevada considered what constitutes a
13 “specific authorization” under NRS § 597.995(1). *Fat Hat, LLC* (“Fat Hat”) was sued by several
14 of its employees after they discovered Fat Hat had been secretly filming them in their dressing
15 areas as they changed attire. Fat Hat moved to compel arbitration based on the arbitration clauses
16 in the plaintiffs’ independent contractor or employment contracts. The district court denied this
17 request, so Fat Hat appealed.

18 On appeal, each of the six employee plaintiffs argued that their arbitration agreements did
19 not comply with NRS § 597.995(1) because they did not contain a “specific authorization” for
20 arbitration. The court accepted this argument for four of the six employees. It reasoned

21 Though the arbitration provision immediately preceded the signature
22 line on the last page for all the contracts, that was a general signature
23 line indicating consent to all the terms of the contract. Thus, those
24 signatures do not qualify as specific authorizations for the arbitration
25 provision. Although Kirtz initialed at the bottom of the page with
the arbitration provision, she initialed at the bottom of every page;
thus, her initials fail to demonstrate that she affirmatively agreed to
the arbitration provision.

26 *Fat Hat*, 2016 Nev. Unpub. LEXIS 762, at *4. With the other two employee plaintiffs, the Court
27 held they did specifically authorize arbitration because “[i]n addition to a signature line at the end
28 of the contracts, both Hebert and Mihaylova were required to fill in their names and addresses in

1 the blank spaces of the provision, explicitly stating that the agreement to arbitrate was effective.”
2 Id. at *4–*5. Based on this, the Court held these two contracts complied with NRS § 597.995(1).

3 In this case, Mrs. Dileo initially signed a Resident Agreement that contained five pages
4 with a single signature block on page “5” that applied to the whole agreement. Resident
5 Agreement, attached as **Exhibit “A”** to Deft.’s Reply. She then signed a separate “Resident
6 Agreement Addendum” (the “Addendum”) that contained the subject arbitration clause. Resident
7 Addendum, attached as **Exhibit “B”** to Defendants’ Reply. This Addendum contained its own
8 signature line, and, just like the two employee contracts in *Fat Hat*, Mrs. Dileo was required to fill
9 in her name, date, and her signature. Under *Fat Hat*, this constitutes a specific authorization under
10 NRS 597.995(1).

11 Plaintiffs’ argument hinges on how broadly or narrowly the Court defines the word
12 “provision” and is tantamount to asking the proverbial question of how many angels can dance on
13 the head of a pin. It is divorced from the practical purpose of NRS 597.995. This statute states that
14 an “agreement which includes a provision which requires a person to submit to arbitration any
15 dispute arising between the parties to the agreement must include specific authorization for the
16 provision which indicates that the person has affirmatively agreed to the provision.” NRS
17 597.995(1). The obvious purpose of this statute is to ensure that a signatory is specifically aware
18 and specifically authorizes an arbitration clause or agreement and does not merely agree to an
19 arbitration clause that is buried in the annals of a multi-page contract.

20 In this case, the Addendum that Mrs. Dileo signed was separate and apart from the five
21 page Resident Agreement that she signed. Ex. A; Ex. B. The Addendum is labeled in bold,
22 capitalized text “Grievance and Arbitration.” The whole Addendum is less than 200 words. It is
23 not buried in the middle of a multipage document that contains one sweeping authorization. It is
24 front and center on a single page. Further diving into linguistic oblivion, Plaintiffs argue that
25 because the Addendum contains two paragraphs labeled “Grievances” and “Arbitration,” the
26 Addendum must contain two signature blocks. Based on this, Plaintiffs suggests that the signature
27 at the bottom of the Addendum is not a specific authorization for arbitration because it authorizes
28 both grievances and arbitration. The signature line is literally an inch below the arbitration clause.

1 Plaintiffs are essentially arguing that Mrs. Dileo did not specifically authorize the arbitration
2 agreement because it contained a 54 word sentence about her right to submit grievances to the
3 group home staff but would ultimately be required to arbitrate any grievances. Mrs. Dileo did not
4 offer any testimony that she was not aware of the arbitration clause or that she was confused
5 because the addendum contained two clauses. To say that she was confused or misled would strain
6 credulity. The Agreement was less than 200 words and was on a single page. Moreover, Plaintiffs
7 assume that the "Grievances" clause is a separate "provision" for purposes of NRS 597.995. It is
8 not. It is an introductory clause to the arbitration agreement. It states that residents may voice
9 grievances to the group home staff. The second clause states that those grievances or disputes are
10 subject to arbitration. These two clauses comprise a single arbitration agreement. More
11 importantly, as highlighted above, the signature line for the Addendum was an inch below the
12 arbitration clause. Plaintiffs' lack any tenable basis to say that Mrs. Dileo was not aware of the
13 arbitration agreement and did not specifically authorize it. Based on this, this Court correctly ruled
14 the Agreement complies with NRS 597.995.

15 **b. The Agreement Substantially Complies with NRS 597.995**

16 The Agreement substantially complies with NRS 597.995. "Generally, in determining
17 whether strict or substantial compliance is required, courts examine the statute's provisions, as
18 well as policy and equity considerations. Substantial compliance may be sufficient to avoid harsh,
19 ~~unfair or absurd consequences.~~" *Leven v. Frey*, 123 Nev. 399, 407, 168 P.3d 712, 717 (2007).
20 Nevada courts subscribe to the general tenant that "time and manner requirements are strictly
21 construed, whereas substantial compliance may be sufficient for "form and content"
22 requirements." *Id.* "The district court has discretion to determine whether there has been
23 substantial compliance with the statute." *Las Vegas Plywood & Lumber, Inc. v. D&D Entprs.*, 98
24 Nev. 378, 380, 649 P.2d 1367, 1368 (1982). The Nevada Supreme Court has held that when the
25 purpose of a statute is to give notice to a party, the doctrine of substantial compliance applies. *See*
26 *Las Vegas Plywood & Lumber, Inc. v. D&D Entprs.*, 98 Nev 378, 380, 649 P.2d 1367 (1982)
27 ("The purpose of NRS 108.227(1) is to notify the property owner of the lien; therefore, substantial
28 compliance with the requirements of the statute will suffice if the owner receives actual notice and

1 is not prejudiced.”).

2 NRS 597.995’s plain objective is to ensure that a signatory receives adequate notice and
3 specifically authorizes an arbitration agreement. Moreover, its requirement that arbitration
4 agreements have a specific authorization is a clear “form and content” requirement for which
5 substantial compliance is sufficient. *See Leven*, 23 Nev. at 407, 168 P.3d at 717. The statute has
6 nothing to do with time or manner provisions, so it does not trigger strict compliance. Substantial
7 compliance must apply to all arbitration agreements with regard to their congruity with NRS
8 597.995 because such agreements come in varied forms and use different language and structures.
9 It would be impossible or impractical to require all persons in Nevada to utilize a uniform
10 arbitration agreement. Such a rigid requirement would unduly infringe on a person’s freedom to
11 contract. This practical reality reinforces the need to review arbitration agreements conformity
12 with NRS 597.995 for substantial compliance.

13 In this case, the subject arbitration agreement substantially complies with NRS 597.995(1).
14 It fulfilled the spirit and purpose of this statute by giving Mrs. Dileo clear notice that any
15 grievances or disputes would be subject to arbitration. Moreover, Mrs. Dileo is not prejudiced by
16 being bound by an agreement that she voluntarily executed. If anything, not enforcing the parties’
17 Agreement prejudices Defendants’ by robbing them of the benefit of their bargain, even though
18 they made significant efforts to ensure Mrs. Dileo specifically authorized the arbitration
19 agreement. This is the type of absurd and harsh result that the doctrine of substantial compliance
20 seeks to ameliorate. Mrs. Dileo is engaging in linguistic gymnastics to avoid an Agreement she
21 knowingly and voluntarily signed. Plaintiffs’ Motion, on a fundamental level, seeks to capitalize
22 on a cheap technicality to avoid a contract. Plaintiffs present no credible argument that the
23 arbitration agreement was masked with fine print or buried in the annals of a dense contract. The
24 Resident Agreement Addendum that contained the arbitration clause was on a single page,
25 contained less than 200 words, did not contain any fine print, contained its own signature block
26 separate from the rest of the Resident Agreement, and stated in bold, capitalized font, “**Grievance**
27 **and Arbitration.**” It is as if Plaintiffs are saying that had the grievances clause been attached to
28 the arbitration clause, there would be no issues here. Not only are the grievance and arbitration

1 clauses part of the same arbitration provision, this argument underscores that Plaintiffs are trying
2 to capitalize on a cheap technicality that has nothing to do with the purpose or substance of NRS
3 597.995(1). The circumstances and practical reality are important here. That is, Mrs. Dileo had
4 specific notice and specifically authorized the arbitration clause by affixing her signature to the
5 Addendum. Based on this, Defendants respectfully urge this Court to reaffirm its prior ruling and
6 enforce the parties' Agreement consistent with its Order.

7 **III. CONCLUSION**

8 Based upon the foregoing, Defendants respectfully request that this Honorable Court deny
9 Plaintiffs' Motion for Rehearing and honor its prior ruling.

10 DATED this 5th Day of May, 2020

11 LEWIS BRISBOIS BISGAARD & SMITH LLP
12
13

14 By /s/ John M. Orr

15 S. BRENT VOGEL

16 Nevada Bar No. 006858

17 JOHN M. ORR

18 Nevada Bar No. 14251

19 6385 S. Rainbow Boulevard, Suite 600

20 Las Vegas, Nevada 89118

21 Tel. 702.893.3383

22 *Attorneys for Defendant The Heights of*
23 *Summertin, LLC*
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 5th day of May 2020, a true and correct copy
3 of MAIDE, L.L.C, a Nevada limited-liability company d/b/a GENTLE SPRING CARE
4 HOME, and SOKHENA K. HUCH, and MIKI N. TON's OPPOSITION TO PLAINTIFFS'
5 MOTION FOR REHEARING was served by electronically filing with the Clerk of the Court
6 using the Wiznet Electronic Service system and serving all parties with an email-address on
7 record, who have agreed to receive Electronic Service in this action.

8 Jamie S. Cogburn, Esq.
9 Hunter S. Davidson, Esq.
10 COGBURN LAW OFFICES
11 2580 St. Rose Parkway, Suite 330
12 Henderson, NV 89074
13 Tel: 702.748.7777
14 Fax: 702.966.3880
15 *Attorneys for Plaintiffs*

16 By /s/ Roya Rokni
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT A

EXHIBIT A



1 S. BRENT VOGEL
Nevada Bar No. 06858
2 Brent.Vogel@lewisbrisbois.com
JOHN M. ORR
3 Nevada Bar No. 14251
John.Orr@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
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CASE NO. A-19-797533-C

DEPT. NO. 14

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4 Orr, Esq. and Plaintiffs Cindy Dileo, as the Administrator of the Estate of Thomas Dileo
5 (the "Estate"), Thomas Dileo, Jr., an heir of Thomas Dileo, and Cindy Dileo, an heir of
6 Thomas Dileo (Thomas Dileo, Jr. and Cindy Dileo collectively referred to as the "Heirs"),
7 appeared by and through Hunter Davidson, Esq. The Court having reviewed the
8 pleadings and papers on file, being fully advised in the premises, having heard the oral
9 argument of counsel and good cause appearing therefore, the Court finds as follows:

10 The Court finds Corinne Dileo executed a valid arbitration agreement (the
11 "Agreement") on behalf of Thomas Dileo on January 30, 2015, when Mr. Dileo became a
12 resident a Gentle Spring Care Home. On June 27, 2019, Plaintiffs Corinne Dileo, Thomas
13 Dileo, Jr., and Cindy Dileo, filed a Complaint against Defendants, asserting claims under
14 NRS § 41.1395 ("Elder Abuse"), NRS 48.105 ("Wrongful Death"), and for Negligence
15 under NRS § 41.100. Cindy and Thomas Dileo, Jr. were not a signatories to the
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17 The Supreme Court of Nevada has held "[g]enerally, arbitration is a matter of
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20 656, 550 (2008). A nonsignatory "may be bound to an arbitration agreement if so dictated
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22 assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel." *Id.*

23 NRS 38.221 further provides a specific framework with which this Court must
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6 has been initiated or threatened but that there is no
7 agreement to arbitrate, the court shall proceed summarily to
8 decide the issue. If the court finds that there is an enforceable
9 agreement to arbitrate, it shall order the parties to arbitrate.
- 10 3. If the court finds that there is no enforceable agreement, it
11 may not, pursuant to subsection 1 or 2, order the parties to
12 arbitrate.
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- 15 6. If a party makes a motion to the court to order arbitration,
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17 involves a claim alleged to be subject to the arbitration until
the court renders a final decision under this section.
- 18 7. If the court orders arbitration, the court on just terms shall
19 stay any judicial proceeding that involves a claim subject to
20 the arbitration. If a claim subject to the arbitration is
21 severable, the court may limit the stay to that claim.

22 NRS 38,221(1)-(3), (6)-(7).

23 The Estate's claims for Wrongful Death, Elder Abuse, and Negligence are subject
24 to Arbitration because Corrinne Dileo, as the special administrator of the Estate,
25 "succeeds to the rights and obligations of the Estate's decedent, effectively stepping into
26 the shoes of the decedent." *Colo. Nat'l Bank of Denver v. Friedman*, 846 P.2d 159, 163
27 (Colo. 1993). The Heirs "not have standing to assert an elder abuse or negligence claim."
28 *Echevarria v. Echevarria*, No. 66618, 2015 WL 7431757 (Nov. 19, 2015) ("nothing in NRS
41.085 authorizes an heir to maintain an action for elder abuse or neglect on behalf of a
decedent."); NRS 41.100(1) ("[e]xcept as otherwise provided in this section, no cause of
action is lost by reason of the death of any person, but may be maintained by or against
the person's executor or administrator.").

1 The Court finds that there is no evidence the Heirs are bound to the Agreement
2 by virtue of other principles of contract law, i.e., estoppel, assumption, agency. Under
3 NRS 38.221(1), there is not a valid agreement to arbitrate between the Heirs and
4 Defendants.

5 The Court does find as a matter of law that there is a valid agreement to arbitrate
6 between the Estate and Defendants.

7 The Court, having considered the arguments of counsel, and good cause
8 appearing, hereby finds and orders as follows:

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Corinne R.
10 Dileo's, as Special Administrator for the Estate of Thomas Dileo, claims against
11 Defendants for Elder Abuse, Negligence, and Survival Action be referred to binding
12 Arbitration pursuant to the Resident Agreement Addendum attached to Defendants'
13 Motion.

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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs Thomas
2 Dileo, Jr. and Cindy Dileo's, as statutory heirs to Thomas Dileo, individual claims against
3 Defendants for Wrongful Death are stayed during the pendency of the binding arbitration.

4 IT IS SO ORDERED

5 DATED this 3rd day of ^{AE}April, 2020.
6

7 
DISTRICT COURT JUDGE

8 Submitted By:

9 LEWIS BRISBOIS BISGAARD & SMITH LLP
10

11 By: /s/ John M. Orr
12 S. Brent Vogel, Esq.
13 John M. Orr, Esq.
14 6385 S. Rainbow Boulevard, Suite 600
15 Las Vegas, Nevada 89118
16 Attorneys for Defendant
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21
22
23
24
25
26
27
28

EXHIBIT B

EXHIBIT B



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 Brent.Vogel@lewisbrisbois.com
JEFFREY H. BALLIN
3 Nevada Bar No. 004913
Jeffrey.ballin@lewisbrisbois.com
4 JOHN M. ORR
Nevada Bar No. 14251
5 John.Orr@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
7 702.893.3383
FAX: 702.893.3789
8 *Attorneys for Defendants Maide, L.L.C, d/b/a Gentle Spring Care Home,*
Sokhena K. Huch, and Miki Ton

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 CORINNE R. DILEO as Special
13 Administrator for the ESTATE OF THOMAS
DILEO; THOMAS DILEO, JR., as Statutory
14 Heir to THOMAS DILEO; and CINDY
DILEO, as Statutory Heir to THOMAS
15 DILEO,

16 Plaintiffs,

17 vs.

18 MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
19 HOME; SOKHENA K. HUCH, an individual;
MIKI N. TON, an individual; DOE
20 INDIVIDUALS 1-10, inclusive; ROE
ENTITIES 11-20, inclusive,

21 Defendants.

CASE NO. A-19-797533-C
Dept. No.: 1

**MAIDE, L.L.C, a Nevada limited-liability
company d/b/a GENTLE SPRING CARE
HOME; SOKHENA K. HUCH, an
individual; MIKI N. TON's REPLY IN
SUPPORT OF DEFENDANTS' MOTION
TO COMPEL ARBITRATION**

**HEARING DATE: 10/17/2019
IN CHAMBERS**

22
23 Defendants MAIDE, L.L.C, a Nevada limited-liability company d/b/a GENTLE SPRING
24 CARE HOME; SOKHENA K. HUCH, an individual; MIKI N. TON (collectively referred to as
25 "Defendants"), by and through their attorneys of record, S. Brent Vogel, Esq., Jeffrey H. Ballin,
26 Esq., and John M. Orr, Esq. of the Law Firm LEWIS BRISBOIS BISGAARD & SMITH, hereby
27 file this Reply in Support of Defendants' Motion to Compel Arbitration.
28

1 This Motion is based upon the papers and pleadings on file in this case, the attached
2 exhibits, the Memorandum of Points and Authorities submitted herewith, and any argument made
3 at the time of hearing in this matter.

4 DATED this 10th day of October, 2019.

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8 By /s/ John M. Orr

9 S. BRENT VOGEL

10 Nevada Bar No. 6858

11 JOHN M. ORR

12 Nevada Bar No. 14251

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

16 *Attorneys for Defendants, The Heights of Summerlin,*
17 *LLC*

18 **MEMORANDUM OR POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 Plaintiffs' claims against Defendants are subject to binding arbitration in accordance with
21 the arbitration agreement (the "Agreement") that Corrine Dileo signed as the personal
22 representative of Thomas Dileo. Plaintiffs make three principle arguments against the
23 enforceability of the Agreement. First, Plaintiff argues that the Agreement is unenforceable
24 because it does not contain a specific authorization as required by NRS § 597.995(1). The
25 argument misstates facts. The Agreement is clearly labelled "Grievances and Arbitration" and is
26 set aside from the rest of the resident agreement on its own page. It also contains its own signature
27 line, which the Supreme Court of Nevada has held constitutes a "specific authorization" for
28 purposes of NRS § 597.995(1). *See Fa Hat, LLC v. DiTerlizzi*, No. 68479, 2016 Nev. Unpub.
LEXIS 762, at *4-*5 (Nev. Sept. 21, 2016). Ms. Dileo signed this Agreement on a separate
signature line, demonstrating her assent to the Agreement.

1 Second, Plaintiffs argue the Agreement is unenforceable because it incorrectly contains the
2 name of another residential group home owned by Maide, LLC, Bella Estate Care Home. Mr.
3 Dileo was a resident at Gentle Springs Care Home ("Gentle Spring), not Bella Estate Care Home
4 ("Bella Estate"). Plaintiffs conveniently ignore, however, that Ms. Dileo was fully aware that her
5 agreement was with Gentle Spring based on the circumstances of the transaction and the obvious
6 fact that Mr. Dileo was a resident of Gentle Spring, not Bella Estate. Moreover, the Agreement did
7 not need to be signed by Defendants to be enforceable. In accordance with the plain language of
8 NRS § 597.995 and well-settled principles of contract law only, the Agreement only needed to
9 contain the signature of the person being compelled to arbitrate, i.e. Ms. Dileo.

10 Plaintiffs lastly argue that they cannot be compelled to arbitrate their claims because Ms.
11 Dileo only signed the Agreement in her representative capacity as Mr. Dileo's power of attorney.
12 This argument disregards the nature of Plaintiffs' claims. Plaintiffs have asserted claims for
13 negligence, elder abuse under NRS § 41.1395, and wrongful death under NRS § 48.105. As the
14 personal representative of Mr. Dileo's Estate, Ms. Dileo "succeeds to the rights and obligations of
15 the Estate's decedent, effectively stepping into the shoes of the decedent." *Colo. Nat'l Bank of*
16 *Denver v. Friedman*, 846 P.2d 159, 163 (Colo. 1993). The heirs do not have standing to assert an
17 elder abuse or negligence claim. *Echevarria v. Echevarria*, No. 66618, 2015 WL 7431757 (Nov.
18 19, 2015) ("nothing in NRS 41.085 authorizes an heir to maintain an action for elder abuse or
19 neglect on behalf of a decedent."). NRS 41.100(1) ("[e]xcept as otherwise provided in this section,
20 no cause of action is lost by reason of the death of any person, *but may be maintained by or*
21 *against the person's executor or administrator.*" (emphasis added). These claims belong to Ms.
22 Dileo as the personal representative of Mr. Dileo's estate. The Estate's claims are unequivocally
23 subject to arbitration because Ms. Dileo is subject to Mr. Dileo's contractual right and obligation.

24 With regard to the heirs' wrongful death claim, this claim is subject to arbitration because
25 it is not severable from the Estate's claims. It would be a waste of time, resources, and an affront
26 to judicial economy to try these claims in separate forums. NRS § 38.221(7). To any extent the
27 Court determines the heirs' claims are severable, NRS § 38.221(7) requires the Court to stay
28 these claims during the pendency of the arbitration, given these claims all stem from a common

1 nucleus of operative facts. NRS § 38.221(7) (“If the court orders arbitration, the court on just
2 terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim
3 subject to the arbitration is severable, the court may limit the stay to that claim.”). For these
4 reasons, Defendants move this Court to dismiss Plaintiffs’ Complaint and refer this case to binding
5 arbitration.

6 II. LEGAL ARGUMENT

7 A. The Agreement Complies with NRS § 597.995(1).

8 NRS § 597.995(1) provides as follows:

9 1. Except as otherwise provided in subsection 3, an agreement
10 which includes a provision which requires a person to submit to
11 arbitration any dispute arising between the parties to the agreement
must include specific authorization for the provision which indicates
that the person has affirmatively agreed to the provision.

12 2. If an agreement includes a provision which requires a person to
13 submit to arbitration any dispute arising between the parties to the
14 agreement and the agreement fails to include the specific
15 authorization required pursuant to subsection 1, the provision is void
and unenforceable.

16 NRS § 597.995(1)–(2). In *Fat Hat*, the Supreme Court of Nevada considered what constitutes a
17 “specific authorization” under NRS § 597.995(1). *Fat Hat*, LLC (“Fat Hat”) was sued by several of
18 its employees after the employees discovered *Fat Hat* had been secretly filming them in their
19 dressing areas as they changed attire. *Fat Hat* moved to compel arbitration based on the arbitration
20 clauses in the plaintiffs’ independent contractor or employment contracts. The district court denied
21 this request, so *Fat Hat* appealed.

22 On appeal, each of the six employee plaintiffs argued that their arbitration agreements did
23 not comply with NRS § 597.995(1) because they did not contain a “specific authorization” for
24 arbitration. The court accepted this argument for four of the six employees. It reasoned

25
26 Though the arbitration provision immediately preceded the signature
27 line on the last page for all the contracts, that was a general
signature line indicating consent to all the terms of the contract.
28 Thus, those signatures do not qualify as specific authorizations for

1 the arbitration provision. Although Kirtz initialed at the bottom of
2 the page with the arbitration provision, she initialed at the bottom of
3 every page; thus, her initials fail to demonstrate that she
affirmatively agreed to the arbitration provision.

4 *Fat Hat*, 2016 Nev. Unpub. LEXIS 762, at *4. With regard to the other two employee plaintiffs,
5 the Court held they did specifically authorize arbitration because “[i]n addition to a signature line
6 at the end of the contracts, both Hebert and Mihaylova were required to fill in their names and
7 addresses in the blank spaces of the provision, explicitly stating that the agreement to arbitrate was
8 effective.” *Id.* at *4–*5. Based on this, the Court held these two contracts complied with NRS §
9 597.995(1).
10

11 In this case, Ms. Dileo initially signed a Resident Agreement that contained five pages
12 with a single signature block on page 5 that applied to the whole agreement. Resident Agreement,
13 attached hereto as **Exhibit “A.”** She then signed a separate “Resident Agreement Addendum” that
14 contained the subject arbitration clause. Resident Addendum, attached hereto as **Exhibit “B.”** This
15 Agreement contained its own signature line, and, just like the two employee contracts in *Fat Hat*,
16 Ms. Dileo was required to fill in her name, date, and her signature. Under *Fat Hat*, this constitutes
17 a specific authorization under NRS 597.995(1). Plaintiff incorrectly argues that the arbitration
18 agreement only includes “a sole signature line at the bottom of the page wherein Plaintiff Corinne
19 R. Dileo generally acknowledges all of the listed provisions.” *Pltfs.’ Oppo.* at 5. Plaintiffs’
20 ironically ignore that the arbitration and grievance clause is the only provision on the page and
21 contains a signature block separate and apart from the rest of the Resident Agreement. The Court’s
22 reasoning in *Fat Hat* suggests that NRS 597.995(1) is designed to ensure that signatories
23 specifically acknowledge an arbitration clause rather than agreeing to a myriad of contractual
24 provisions buried in the annals of an agreement with one sweeping authorization. This is not a
25 concern in this case. Ms. Dileo separately signed the Agreement separate and apart from the total
26 Resident Agreement. Her signature on the addendum reflects her specific acknowledgement and
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28

1 assent to the arbitration clause.

2 **B. The Agreement Is Valid and Enforceable**

3 Plaintiffs further suggest that the Agreement is not a valid contract because the letterhead
4 on the Agreement reads "Bella Estate Care Home," rather than Gentle Spring Care Home.
5 Plaintiffs suggest that this does not sufficiently identify the parties to the Agreement and somehow
6 makes the Agreement invalid. This argument lacks any legal foundation. Indeed, Plaintiffs cite no
7 legal authority to support this flimsy argument. Both Bella Estate and Gentle Spring are residential
8 group homes owned and operated by Maide, LLC. Ton, M. Decl., attached hereto as **Exhibit "C."**
9 "Although the party seeking to enforce an arbitration clause bears the burden of proving the
10 clause's valid existence, any party opposing arbitration must establish a defense to enforcement."
11 *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004). Defendants have met
12 their burden of showing the arbitration clause is enforceable by producing a signed copy of the
13 original arbitration agreement. Plaintiffs do not dispute that Ms. Dileo signed this Agreement. The
14 Agreement otherwise satisfies Nevada's statute of frauds because it contains the signature of the
15 party to be charged. Nevada courts follow the Restatement, which requires the contract to be
16 "signed by the party to be charged" and state "with reasonable certainty . . . each party to the
17 contract either by his own name, or by such a description as will serve to identify him." *Stanley v.*
18 *A. Levy & J. Zentner Co.*, 60 Nev. 432, 112 P.2d 1047, 1053 (Nev. 1941) (quoting Restatement
19 (First) of Contracts § 207 (1932)); ("In the following cases every agreement is void, unless the
20 agreement, or some note or memorandum thereof expressing the consideration, is in writing, and
21 subscribed by the person charged therewith..."); *Wiley v. Cook*, 94 Nev. 558, 563, 583 P.2d 1076,
22 1079 (1978) ("A memorandum, in order to make enforceable within the Statute, any document or
23 writing, formal or informal, [s]igned by the party to be charged or by his agent actually or
24 apparently authorized thereunto.").

25 To any extent the Agreement is ambiguous because it contains the name of Bella Estate,
26 rather than Gentle Spring, Nevada law permits parol evidence to clear up supplemental details of
27 an agreement. *See Butler v. Lovoll*, 96 Nev. 931, 620 P.2d 1251, 1253 (Nev. 1980). It is
28 disingenuous for Plaintiffs to suggest that they were not aware that the correct entity was Gentle

1 Spring. The circumstances of this transaction clearly demonstrate that both parties understood that
2 Mr. Dileo and Gentle Spring were parties to the Agreement. The fact Mr. Dileo was admitted into
3 Gentle Spring reflects this intent. Ms. Dileo has not asserted that she thought the Agreement was
4 with a different entity or that there was not otherwise mutual assent to the substance of the
5 Agreement. Plaintiffs' argument reflects a desperate attempt to capitalize on a cheap technicality,
6 rather than the true intent of the parties. *See Hilton Hotels Corp. v. Butch Lewis Productions*, 107
7 Nev. 226, 231–32, 808 P.2d 919, 922 (“the better approach is for the courts to examine the
8 circumstances surrounding the parties' agreement in order to determine the true mutual intentions
9 of the parties. Courts today tend to be willing to look beyond the written document to find the
10 “true understanding of the parties.”). Both Gentle Spring and Bella Estate are owned and operated
11 by Maide, LLC, Ex. C., so on a practical level, the Agreement identifies the correct party.

12 **C. Plaintiffs Are Bound to the Arbitration Agreement**

13 Plaintiffs' argument that Ms. Dileo is not bound to the Agreement misapprehends her role
14 as Mr. Dileo's personal representative and the nature of her claims. As Plaintiffs point out, they
15 have asserted claims for negligence, elder abuse under NRS § 41.1395, and for wrongful death
16 under NRS § 41.085.¹ The Nevada Supreme Court has specifically held that an heir does not have
17 standing to assert an elder abuse claim under NRS 41.085. *Echevarria v. Echevarria*, No. 66618,
18 2015 WL 7431757 (Nov. 19, 2015) (“nothing in NRS 41.085 authorizes an heir to maintain an
19 action for elder abuse or neglect on behalf of a decedent.”). NRS 41.100(1) provides: “[e]xcept as
20 otherwise provided in this section, no cause of action is lost by reason of the death of any person,
21 *but may be maintained by or against the person's executor or administrator.*” NRS 41.100(1)
22 (emphasis added). NRS § 41.085 allows the personal representative to maintain an action for
23 wrongful death and recover damages on behalf of the decedent. NRS § 41.085(5). The personal
24 representative of an Estate steps into the decedent's shoes and inherits the decedent's contractual
25

26
27 ¹ Plaintiffs claim they also asserted a survivor action under NRS 41.100. There is no distinct cause of action entitled a
28 survivor action. NRS 41.100 simply confers standing on a personal representative to assert claims on behalf of a
decedent.

1 rights, obligations, and causes of action. *Colo. Nat'l Bank of Denver v. Friedman*, 846 P.2d 159,
2 163 (Colo. 1993); *Farm Bureau Mut. Ins. Co. of Idaho v. Eisenman*, 286 P.3d 185, 189 (Id. 2012)
3 (“the personal representative “steps into the shoes” of the decedent to administer the estate, and
4 may sue on causes of action the decedent may have pursued, the personal representative may not
5 bring an action that abated upon the death of the decedent.’). Mr. Dileo’s heirs do not have
6 standing to assert a negligence or elder abuse claim against Defendants. Those claims belong to
7 Ms. Dileo as the Estate’s personal representative under NRS § 41.100. Given Ms. Dileo inherits
8 Mr. Dileo’s contractual rights and obligations, the Estate’s claims for elder abuse, negligence, and
9 wrongful death are subject to arbitration.

10 The heirs should also be compelled to arbitrate their wrongful death claim because it is not
11 severable from the Estate’s claims. NRS 38.221(7) provides: “If the court orders arbitration, the
12 court on just terms shall stay any judicial proceeding that involves a claim subject to the
13 arbitration. *If a claim subject to the arbitration is severable, the court may limit the stay to that*
14 *claim.*” NRS 38.221(7) (emphasis added). The heirs’ claims are not severable. Claims are
15 severable when they rest on different facts and legal theories. *Coutin v. Young & Rubicam Puerto*
16 *Rico, Inc.*, 124 F.3d 331, 339 (5th Cir. 1997) (“When different claims for relief are not
17 interconnected—that is, when the claims rest on different facts and legal theories—they are by
18 definition severable and unrelated.”); *Figueroa-Torres v. Toledo-Davila*, 232 F.3d 270, 278 (1st
19 Cir. 2000) (“We recently held that when different claims for relief are not interconnected that is,
20 when the claims rest on different facts and legal theories they are by definition severable and
21 unrelated.”) (internal alterations omitted). The heirs’ claims are based on Mr. Dileo’s residency at
22 Gentle Spring. It would waste the parties’ and this Court’s time and resources to essentially
23 litigate the same set of facts twice, and it hazards leading to inconsistent results. All claims will
24 require Plaintiffs to prove that Defendants breached the applicable standard of care and that those
25 breaches caused Mr. Dileo’s death or other injuries. These claims are so intertwined that it would
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1 be a waste of judicial resources and the parties' resources to litigate identical claims in two
2 forums. Moreover, the Supreme Court of Nevada has held that all doubts regarding the scope of an
3 arbitration agreement are resolved in favor of arbitration *Kindred v. 2nd Jud. Dist. Court*, 116
4 Nev. 405, 411, 996 P.2d at 907 ("in judging the scope of the arbitration agreements, we resolve
5 all doubts concerning the arbitrability of the subject matter of a dispute in favor of arbitration").
6

7 In the event the Court determines that the heirs' wrongful death claim is not subject to
8 arbitration, NRS 38.221(7) requires these claims to be stayed during the pendency of the
9 arbitration of the Estates' claims. NRS § 38.221(7) ("If the court orders arbitration, the court on
10 just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a
11 claim subject to the arbitration is severable, the court may limit the stay to that claim.").

12 III. CONCLUSION

13 Based upon the foregoing, Defendants respectfully request that this Honorable Court grant
14 Defendants' Motion to Compel Arbitration.

15 DATED this 10th day of October, 2019

16 LEWIS BRISBOIS BISGAARD & SMITH LLP

17
18
19 By /s/ John M. Orr

20 S. BRENT VOGEL

21 Nevada Bar No. 006858

22 JOHN M. ORR

23 Nevada Bar No. 14251

24 6385 S. Rainbow Boulevard, Suite 600

25 Las Vegas, Nevada 89118

26 Tel. 702.893.3383

27 *Attorneys for Defendant The Heights of*
28 *Summerlin, LLC*

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 10th day of October, 2019, a true and correct copy
3 of MAIDE, L.L.C, a Nevada limited-liability company d/b/a GENTLE SPRING CARE
4 HOME; SOKHENA K. HUCH, an individual; MIKI N. TON's REPLY IN SUPPORT OF
5 DEFENDANTS' MOTION TO COMPEL ARBITRATION was served by electronically
6 filing with the Clerk of the Court using the Wiznet Electronic Service system and serving all
7 parties with an email-address on record, who have agreed to receive Electronic Service in this
8 action.

9 Jamie S. Cogburn, Esq.
10 Hunter S. Davidson, Esq.
11 COGBURN LAW OFFICES
12 2580 St. Rose Parkway, Suite 330
13 Henderson, NV 89074
14 Tel: 702.748.7777
15 Fax: 702.966.3880
16 *Attorneys for Plaintiffs*

17 By /s/ Roya Rokui
18 an Employee of
19 LEWIS BRISBOIS BISGAARD & SMITH LLP
20
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EXHIBIT 'A'

ADMISSION AGREEMENT

This is a adult group care Facility licensed by the Bureau of Licensure and Certification.

Facility shall provide the following basic services:

Thomas Dileo 052 28 4390 8/15/1934
Name of Resident Social Security # Date of Birth

1) ADMISSIONS:

- a) Admissions to this facility are accorded to residents without discrimination because of race, creed, color, religion, or national origin.
- b) It is hereby understood and agreed upon that the resident's age, pre-admission appraisal information, emergency information, financial information, health history, physician's report, and any other misrepresentation or omission by the resident or responsible party shall render this agreement voidable at the option of the facility, with appropriate notice. In any time, the facility may request an updated copy of the above-forms. The facility maintains the right to legal recourse for damages to misrepresentation during admission.

2) BASIC GENERAL SERVICES:

- a) Room: Private ☒ Semi-Private ☐
- b) Food Service: Three Nutritious meals daily. We have snack available for all residents but we serve formal setting snack in the afternoon only. Snacks maybe limited as per diet requirement of the individual. A fruit tray is available in the counter for anyone anytime during the day.

- c) Laundry Service: Facility is not responsible for dry cleaning & any other special laundering needs of the resident.
- d) Cleaning of the resident's room.
- e) Comfortable twin size bed. Linens changed bi-weekly or as often as needed.
- f) Bedside care for minor temporary illnesses.
- g) The facility will not be responsible for any cash resources and other belongings not entrusted to the facility. At the time of admission, facility shall provide Theft & Loss Policy.
- h) The facility maintains to contact the resident physician or in his absence an alternate physician or the paramedics at the expense of the resident. All expenses incurred shall be the resident's responsibility.
- i) If the resident becomes afflicted with a contagious disease or sustained an illness that would jeopardize the safety & health of the residents and the facility, or for which the facility is not allowed to provide care, the facility shall have the authority to relocate the resident to a hospital or an appropriate placement for such care at the expense of the resident or the resident's representative.

3) ACCOMMODATIONS:

- a) Furnishings such as twin size bed, dresser drawer, small chair and night stand shall be provided by the facility. The resident is permitted to personalize their individual accommodations by decorating and providing their own furnishings
- b) The resident agrees not to change the lock of said premises without prior consent of the facility.

4) OPTIONAL SERVICES: Other optional services may be agreed upon. The family shall be responsible for the payment of optional services.

- a) Cable TV.
- b) Incontinence & Skin Care Supplies (diapers, bed pads, creams, etc)
- c) First Aid Supplies – Minor wound creams, etc
- d) Beauty or Barber Shop
- e) Long Distance Phone Call – Clients may have telephone or cable TV on their own room at the resident's expense.
- f) Nourishment (Ensure, etc as ordered by the physician)

5) **MONTHLY COST:**

The monthly fee for basic services is \$ 1200, pro-rated on a daily basis, to be paid in advance by the 1st of each month. Bills not paid by the 5th of the month will be assessed a \$ 25.00. Habitual late payment (up to 3x) shall be a ground for eviction. A deposit of 30 days and first month rent shall be required on admission.

6) **OTHER FEES:**

A one time fee of \$250.00 for set up and administrative fee shall be assessed and payable on admission. This is non refundable irregardless of how long the clients stay at the facility.

7) **REFUND POLICY:**

- a) The resident is required to give 30 days written notice of intent to move.
- b) Tenancy with (Gentle Spring) is a MONTH to MONTH tenancy; therefore resident/responsible party is completely responsible for the entire month whether resident leaves before the month is over for any reason such as HOSPITALIZATION, RELOCATION TO A NURSING HOME, RELOCATION TO ANOTHER GROUP CARE FACILITY, GOING ON VACATION, and AND DEATH.

8) **TEMPORARY ABSENCE:**

In cases of temporary absence the monthly rate remains the same. In case of absence due to hospitalization, family vacation or any other reason, daily rate will continue to incur until the resident's belongings are removed from the room.

9) **RATE INCREASES:**

The facility shall notify the resident 30 days prior to any change in the residents monthly rate as assessed that may be due to change in level of care and or other needs not determined during pre-placement.

10) **EVICTON PROCEDURE:**

- a) The licensee/administrator upon 30 days written notice to the resident, evict the resident for any of the following reasons:
 - i) Non-payment of monthly fee within 5 days of the due date.

ii) Failure of the resident to comply with state or local law after receiving written notice of the alleged violation.

iii) Failure of the resident/representative to comply with the facility's policies and/or House Rules as signed on admission. The facility retains the right to revise the House Rules as needed to ensure safe and efficient services; the resident agrees to abide by the House Rules and any of its revisions.

b) The licensee or administrator of the facility, upon obtaining written and/or documented telephone approval from the licensing agency, evict the resident upon 3 days written notice to quit. The licensing agency may grant approval for the eviction upon finding a good cause. 'Good cause' is engaging in a behavior which is a threat to the mental and physical health and safety to himself or to the other residents or to the staff.

11) RESIDENT'S NEEDS:

If a re-evaluation of a resident indicates that we were unable to provide appropriate care provided to applicable regulations, the resident and/or his representative will be notified and given ample time to relocate with a minimum of 15 days written notice.

12) VISITING POLICY:

The Visiting hours shall be ~~600~~am to 7pm. Otherwise, advance arrangement with the facility may be needed. The Right to Privacy will be observed at all times, therefore, visiting in a shared room may not be allowed. Visitors are requested to sign the Visitor's Log Book. Resident and/or representative should log out when they are going out and should log in when they return in the Resident Absence Log Book.

13) PAYEE: is the responsible party for paying the basic monthly rate. The above listed person shall make sure they or the resident:

- a) Pays the monthly fee by the first of the month
- b) Cooperate with the House Rules of the facility.

14) FUNDING SOURCE:

The resident's funding source is: Private ☒

Government ☒

WEAKC

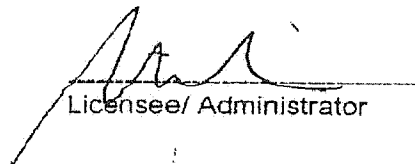
15) INSPECTION RIGHTS:

The BLC, licensing agency, to ensure the best of care the facility is providing them has the right to interview the resident and inspect the resident's record.

16) COMPLAINT PROCEDURE:

Should there be a problem or questions, the administrator could be contacted on the house or cell phone. Administrator may then suggest a meeting to discuss and resolve questions in the facility.

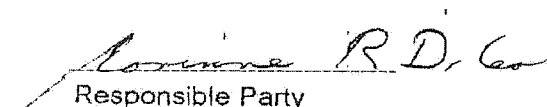
The licensee and resident or responsible party shall comply with all terms and conditions set forth in this agreement. My signature below as a resident or authorized representative indicates that I have read, or had read and explained to, the provisions of this agreement, and enter this agreement voluntarily.



Licensee/ Administrator

1/30/15

Date



Responsible Party

1/30/2015

Date

NO REFUND POLICY

I, _____ (Resident), AND / OR Corrine Diler (Responsible Party) acknowledged the receipt of the Admission Contract, dated _____ Initial

cdl "NO REFUND POLICY " do not apply on the **SECURITY DEPOSIT**.

cdl The "NO REFUND POLICY " is binding upon the Heirs, Relatives, Assigned Friends, and Successors in interest to the parties.

cdl Tenancy with the group care facility is a **MONTH TO MONTH** Tenancy, therefore you are completely responsible for the entire month whether you leave before the month is over. In short, **NO REFUND** will be given for the remaining days of the month whether having left the facility due to **HOSPITALIZATION, RELOCATION TO A NURSING HOME, RELOCATION TO ANOTHER GROUP CARE FACILITY, GOING ON VACATION, OR DEATH**, or any other circumstances.

cdl No verbal agreements will enter into this written agreement.

By signing below, I (WE) acknowledge the No Refund Policy. The facility has fully explained to me or us the terms and conditions of the Admission Contract. It is very clear and explicit, **NO REFUNDS, NO EXCEPTIONS**. I (WE) have read, understood, and agreed to all the terms mentioned above.

Corrine R Diler
Signature of Resident or Responsible Party
(Guardian, Guarantor, Conservator, or POA)

30/15
Date

Corrine Delia
Print Name

[Signature]
Facility Administrator

30/15
Date

NO REFUND POLICY

Facility Policy

Resident shall not be segregated or restricted on the grounds of race, color or National origin. (Non-discrimination policy is posted in the facility)

Residents admitted must:

- a. Have the physical and cognitive capabilities that meet the standards under which the facility is licensed.
- b. be at least 18 years of age
- c. be free of active TB
- d. not require restraint (either physical or chemical)
- e. not be required to be confined in locked quarters
- f. not require 24 hr. skilled nursing or medical supervision

The residential facility shall maintain conditions in which the residents may exercise the following rights:

- a. To be free from abuse, neglect and exploitation on the part of residential facility staff
- b. To be free from abuse and exploitation the part of other residents or visitors.
- c. To speak with advocates.
- d. To be treated with respect and dignity.
- e. To live in a safe and comfortable environment.
- f. Freedom to have social interaction and communication that are without restriction and to engage in private conversation.
- g. To be able to lodge a complaint or grievance and receive a response in a timely manner.
- h. To initiate an advance directive and/or power of attorney for healthcare decisions and to have the wishes contained in such documents complied.

All grievances shall be directed to the administrator and shall be responded to shortly. The facility shall maintain a record of grievances and the facility's response to the resident shall be documented.

Residents shall be the opportunity to attend religious services of his/her choice and participate in person and pastoral counseling.

Residents will be allowed to enter or leave the facility at any time (depending on Physical and mental abilities) and with prior notice to facility staff.

Residents allowed to rent in their room as desired.

Activities suited to resident interests and capabilities will be provided. Residents shall be encouraged to contribute to the planning activities.

Protective supervision and adequate staffing will be provided for residents at all times.

Residents to receive their own mail.

Evacuation plan will be posted in the facility and understood by employees and residents.

All residents will be instructed regarding the facility's evacuation procedures.

Resident signature: Lawrence R. De Leon

Administrator signature: [Signature]

Facility Policies
Page 2

A list of emergency numbers will be posted by the facility telephone.
(Fire Dept, paramedics (911) and physicians).

Residents admitted will have doctor statement describing their physical and medical conditions, medications and ambulating status.

Resident's personal physician will be notified in case of illness, injury or accident. This will be recorded in the resident file.

A written record of all accidents, injuries and illnesses of residents will be kept.

A temporary illness may be cared for in this facility if approved by the doctor.

The resident doctor must approve all medication, including over-the-counter meds.

All medication will be kept in the original container.

All ongoing list of meds taken and/or discontinued will be on file. An individual record will be kept daily to ensure that the resident has taken medication as prescribed.

The prescription bottle will identify the frequency of the medication. Changes in frequency will be documented in the file and validated by the doctor.

Refrigerated medications with resident name, kept in locked box.

Discontinued meds flushed into the toilet. This is documented in the resident's med record and signed by the administrator and a witness.

A current state license will be posted to validate compliance with state requirements for Group Care Home.

Ramps will be provided at exits for residents who use wheelchairs. Accessible bathrooms and bathing facilities will be provided for residents with wheelchairs or walkers.

Caregivers all trained in first aid and CPR. At least one caregiver on duty at all times.
First aid kit available in the facility.

Laundry done on a daily basis.

An adequate linen supplies always available for weekly linen changes or more if necessary.
Clean towels and washcloths provided for each bath.

Meal times are at follows: Breakfast: 7:30 am
Lunch: noon
Dinner: 5:00 PM

Snacks provided midafternoon and evening.

Telephone available for the residents use, local calls only.

Smoking permitted OUTSIDE ONLY.....

Facility Policies
Page 3

Visiting hours are 6:00 AM to 7:00 PM.

Supervision provided at all times for residents at the facility.

I have read the facility policies.

<u>Corrine R. D. Co</u>	<u>1/30/15</u>
Resident or Responsible Party	Dated
<u>AM</u>	<u>1/30/15</u>
Administrator	Dated

Resident's Money and Personal Property Notice

This facility will not be responsible for money or personal property. We suggest that the resident keep no more than \$50.00 in the facility. No employee shall keep any personal belongings or money for any resident.

This facility will make arrangements for any resident to go to his/her bank or ATM machine to withdraw needed funds during normal business hours on each business day.

If a member of the staff of this facility receives a request from a resident to make a withdrawal of money in such an amount that the member of the staff has reason to believe the resident is being or has been exploited, the member of the staff shall report the transaction to:

**DIVISION OF AGING SERVICES, THE WELFARE DIVISION, CLARK COUNTY
SENIOR PROTECTIVE SERVICES OR THE METROPOLITAN POLICY
DEPARTMENT OF LAS VEGAS.**

The Administrator, Owner or Staff member shall not accept appointment as a guardian or conservator of the estate of any resident, become a substitute payee for any payments made to any resident or accept an appointment as attorney in fact for any resident.

If a resident whose only source of income is in the form of monthly checks is legally determined to be unable to manage this money and documentary evidence can be produced showing that efforts to obtain a legal guardian have failed, the facility will no longer be able to provide care for the resident.

**NO MONEY WILL BE HELD BY THIS FACILITY ON BEHALF OF ANY
RESIDENT.**

**NO RESIDENT SHALL LEND MONEY TO AN EMPLOYEE OF THIS FACILITY.
NO EXCEPTIONS!**

Rosanne R. Dileo
Signature of Resident/Responsible Party

1/30/15
Date

[Signature]
Administrator's Signature

1/30/15
Date

EXHIBIT ‘B’

BELLA ESTATE CARE HOME

Resident Agreement Addendum

Grievance and Arbitration

1. **Grievances:** Resident may voice reasonable grievances about services rendered by staff or other personnel and the Home shall record such grievances upon request to do so. In the event of a written grievances, the Home shall investigate it and make written reply to residents of the Home's findings with a reasonable period thereafter.

2 **Arbitration:** Any controversy, dispute or disagreement, whether sounding in tort or contract to law, arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, shall be settled exclusively by binding arbitration, which shall be conducted in (City, State) in accordance with American health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the Arbitration, shall be binding of all parties to the agreement and judgment on the award rendered by the arbitrator maybe entered in any court having jurisdiction thereof. The parties shall agree upon a sole arbitrator of their choice and if they cannot agree on a single arbitrator there shall be three arbitrators with the neutrals arbitrator chosen by the parties' nominated arbitrators.

Corinne R. Dileo
Resident Responsible Party

1/30/2015
Date

At
Resident Responsible Party

1/30/15
Date

EXHIBIT 'C'

DECLARATION OF MIKI TON

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

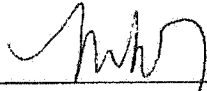
I, MIKI TON, being first duly sworn, depose and state as follows:

1. I make this Declaration in support Defendants' Motion to Compel Arbitration. I make this declaration from my personal knowledge and, if called upon to do so, could and would competently testify to the matters set forth herein in a court of law.
2. I am the operations manager for Maide, LLC ("Maide"), which owns and operates several residential homes for groups throughout Las Vegas, including Gentle Spring Care ("Gentle Spring") and Bella Estate Care Home ("Bella Estate"). Maide owns and operates both of these residential facilities under a fictitious names that have been registered with the Nevada Secretary of State's Office.
3. I have reviewed the Resident Agreement Addendum that is attached to Defendants' Motion to Compel Arbitration as Exhibit "A."
4. I can attest that this document is a true and accurate copy of the Resident Addendum Agreement that Corinne Dileo signed on behalf of Thomas Dileo prior to his residency at Gentle Spring.
5. The Resident Addendum Agreement reads "Bella Estate Care Home" at the top of the document because we at times use resident intake paperwork interchangeably because each facility is owned and operated by Maide.
6. I can attest that at the time of Mr. Dileo's admission, Corinne Dileo was made aware that Mr. Dileo was being admitted into Gentle Spring and that all paperwork she was signing was in relation to Mr. Dileo's admission to Gentle Spring. All parties understood that any agreements Corinne Dileo signed with Gentle Spring on

Thomas Dileo's behalf were between Maide, LLC dba Gentle Spring Care Home and
Corinne Dileo on behalf of Mr. Dileo.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

Subscribed to and sworn this 8th day of October, 2019



Miki Ton for Maide, LLC as its Operations Manager

No notarization required pursuant to NRS 53.045