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10 ARIZONA SUPERIOR COURT

11 MARICOPA COUNTY

12 THE ESTATE OF DORIS L. COTE, by and
13 through CATHERINE COTE, Personal
Representative; CATHERINE COTE, on
14 behalf of herself and DANIEL COTE,
survivors of DORIS L. COTE,

15 Plaintiffs,

16 v.

17 FIVE STAR QUALITY CARE, INC., a foreign
18 corporation doing business in Arizona as THE
FORUM AT DESERT HARBOR; FVE FM
19 FINANCING, INC.; FSQ, INC.; FS TENANT
POOL III TRUST; FIVE STAR DESERT
20 HARBOR, LLC; FIVE STAR QUALITY CARE-
AZ, LLC; MARIA PARHAM and JOHN DOE
21 PARHAM, wife and husband; JOHN DOES 1-
20; ABC CORPORATIONS I-X; XYZ
22 PARTNERSHIPS I-X;

23 Defendants.

NO. CV2012-094285

AMENDED COMPLAINT

(Abuse of a Vulnerable Adult)

24 For her Complaint against Defendants, Plaintiff alleges as follows:

25
26 **ALLEGATIONS COMMON TO ALL COUNTS**

27 1. Venue is proper because all Defendants have agents that reside and do business
28 in Maricopa County.

2. Plaintiff Catherine Cote is the daughter of Doris L. Cote (hereinafter "Ms. Cote"),

who died on June 25, 2012.

1 3. On July 5, 2012, Catherine Cote was appointed as Personal Representative of
2 the Estate of Doris L. Cote by the Superior Court of Arizona in and for Maricopa County.

3 4. In accordance with that July 5, 2012 Superior Court Order, Plaintiff brings this
4 action pursuant to A.R.S. §12-561 *et seq.* and §46-455 on behalf of the Estate of Doris L. Cote,
5 for injuries, pain and suffering, and other economic and non-economic damages sustained by
6 Ms. Cote prior to her death, which injuries and other damages resulted from the acts and
7 omissions of Defendants and their agents and employees, and which survive her death
8 pursuant to Arizona Law, including but not limited to A.R.S. §46-451, *et seq.*

9 5. Plaintiff also brings this action under A.R.S. §12-612 on behalf of herself and
10 Daniel Cote, son of Doris L. Cote, as survivors and statutory beneficiaries of Ms. Cote, for
11 damages for Ms. Cote's wrongful death, including loss of consortium, emotional distress, and
12 other economic and non-economic damages resulting from the acts and omissions described
13 below.

14 6. All Defendants identified as husband and wife were, at all times mentioned herein,
15 married to each other and were acting in furtherance of their marital communities. At the
16 present time, the true name of any spouse identified as John Doe or Jane Doe is unknown to
17 Plaintiffs and is therefore being sued herein fictitiously. As such true identity becomes known,
18 Plaintiffs will seek leave to amend this Complaint accordingly.

19 7. All defendants identified as corporations or other such entities were at all times
20 mentioned herein acting by and through officers, employees, agents, and contractors, who were
21 acting within the course and scope of their employment and authority, and acting as an
22 enterprise as referred to in A.R.S. §46-455(B) and (Q), such that these corporations or other
23 such entities are bound by, and vicariously liable for, the conduct of their officers, agents,
24 employees, and contractors. Such corporations or other such entities also are directly liable for
25 their own negligence, recklessness, and other tortious conduct in the hiring and supervision of
26 the officers, employees, agents, and contractors whose conduct gives rise to this action.

27 8. Defendants John Does 1-20, ABC Corporations I-X and XYZ Partnerships I-X are
28

1 those persons and entities whose relationships to the named Defendants or whose acts or
2 omissions give rise to legal responsibility for the damages incurred by Plaintiffs, but whose true
3 identities are at the present time unknown to Plaintiffs. These persons and entities hereby are
4 notified of Plaintiffs' intention to join them as defendants if and when additional investigation or
5 discovery reveals the appropriateness of such joinder.

6 9. At all times pertinent Defendants held themselves out as competent and qualified
7 in providing and administering health care to the public and to Ms. Cote and willing to comply
8 with the appropriate standard of care for health care providers in their respective fields, and
9 were acting together as an enterprise as defined in A.R.S. § 46-451 *et seq.*

10 10. At all times mentioned herein, Defendant Five Star Quality Care, Inc. was a
11 foreign corporation authorized to do and doing business in Maricopa County, Arizona as The
12 Forum at Desert Harbor, a skilled nursing facility in Peoria, Arizona (hereinafter "Desert
13 Harbor"). Upon information and belief, Defendant Five Star Quality Care, Inc. was the employer
14 and/or principal of all those employed and/or working at Desert Harbor, all of whom were acting
15 in the course and scope of their employment, such that Defendant is vicariously liable for the
16 negligent acts and omissions described below.

17 11. At all times mentioned herein, Defendant FVE FM Financing, Inc. was a foreign
18 corporation doing business in Maricopa County, Arizona as Desert Harbor. Upon information
19 and belief, Defendant FVE FM Financing, Inc. was the employer and/or principal of all those
20 employed and/or working at Desert Harbor, all of whom were acting in the course and scope
21 of their employment, such that Defendant is vicariously liable for the negligent acts and
22 omissions described below.

23 12. At all times mentioned herein, Defendant FSQ, Inc. was a foreign corporation
24 doing business in Maricopa County, Arizona as Desert Harbor. Upon information and belief,
25 Defendant FSQ, Inc. was the employer and/or principal of all those employed and/or working
26 at Desert Harbor, all of whom were acting in the course and scope of their employment, such
27 that Defendant is vicariously liable for the negligent acts and omissions described below.

28 13. At all times mentioned herein, Defendant FS Tenant Pool III Trust was a foreign

1 corporation doing business in Maricopa County, Arizona as Desert Harbor. Upon information
2 and belief, Defendant FS Tenant Pool III Trust was the employer and/or principal of all those
3 employed and/or working at Desert Harbor, all of whom were acting in the course and scope
4 of their employment, such that Defendant is vicariously liable for the negligent acts and
5 omissions described below.

6 14. At all times mentioned herein, Defendant Five Star Desert Harbor, LLC was a
7 foreign limited liability company doing business in Maricopa County, Arizona as Desert Harbor.
8 Upon information and belief, Defendant Five Star Desert Harbor, LLC was the employer and/or
9 principal of all those employed and/or working at Desert Harbor, all of whom were acting in the
10 course and scope of their employment, such that Defendant is vicariously liable for the negligent
11 acts and omissions described below.

12 15. At all times mentioned herein, Defendant Five Star Quality Care-AZ, LLC was a
13 foreign limited liability company doing business in Maricopa County, Arizona as Desert Harbor.
14 Upon information and belief, Defendant Five Star Quality Care-AZ, LLC was the employer
15 and/or principal of all those employed and/or working at Desert Harbor, all of whom were acting
16 in the course and scope of their employment, such that Defendant is vicariously liable for the
17 negligent acts and omissions described below.

18 16. Upon information and belief, at all times mentioned herein, Defendants Five Star
19 Quality Care, Inc., FVE FM Financing, Inc., FSQ, Inc., FS Tenant Pool III Trust, Five Star Desert
20 Harbor, LLC, and Five Star Quality Care-AZ, LLC were all acting in a joint venture and as an
21 enterprise in the operation and management of Desert Harbor, and were the employers and/or
22 principals of all those employed and/or working at Desert Harbor, all of whom were acting in the
23 course and scope of their employment, such that Defendants are jointly liable for the negligent
24 acts and omissions described below. Said Defendants are hereinafter collectively referred to
25 as "Five Star."

26 17. By way of history, Ms. Cote was a patient at Desert Harbor from approximately
27 November 5, 2011 until January 27, 2012. At all times mentioned herein, Ms. Cote was a
28 vulnerable adult as that term is defined in A.R.S. §46-451.

1 18. At all times mentioned herein, Desert Harbor was licensed by the State of Arizona,
2 Department of Health Services, as a skilled nursing facility.

3 19. At all times mentioned herein, Desert Harbor was certified as a skilled nursing
4 facility for purposes of Medicaid, the Arizona Health Care Cost Containment System
5 (AHCCCS), and the Arizona Long-Term Care System (ALTCS).

6 20. Defendants Five Star and their employees owed Ms. Cote a variety of duties
7 under Federal statutes and regulations, State statutes and regulations, and the common law.

8 21. The Federal statutes and regulations referenced above include, but are not limited
9 to, the Federal Nursing Home Reform Act and the Omnibus Budget Reconciliation Acts of 1987,
10 1989, 1990, and 1993 (*see* 42 U.S.C. § 1395 *et seq.* & 42 C.F.R. § 483 *et seq.*)

11 22. The State statutes and regulations referenced above include, but are not limited
12 to, A.R.S. §§ 46-451 *et seq.*, 32-1631 *et seq.*, 36-446 *et seq.*, and Arizona Administrative Code
13 R4-19-101 *et seq.* and R9-10-901 *et seq.*

14 23. Upon information and belief, at all times mentioned herein Defendants John and
15 Jane Does I-V were members of the "governing body" (as defined by 42 CFR §483.75(d)) and
16 "governing authority" (as defined by A.A.C. R9-10-902(A)) of Desert Harbor. At the present
17 time, the true name of John and Jane Does 1-5 are unknown to Plaintiff and are therefore being
18 sued herein fictitiously. As such true identities become known, Plaintiff will seek leave to amend
19 this Complaint accordingly.

20 24. As the governing body and governing authority for Desert Harbor, Defendants
21 John and Jane Does 1-5 were responsible for the organization and administration of Desert
22 Harbor, and had duties that included but were not limited to: 1) ensuring that the facility
23 complied with state laws, rules, and local ordinances; 2) adopting policies and procedures for
24 the facility; and 3) appointing an administrator to manage the facility.

25 25. As the governing body and governing authority, Defendants John and Jane Does
26 1-5 failed to: 1) ensure that Desert Harbor complied with federal and state laws, rules, and local
27 ordinances; 2) adopt and implement adequate written policies and procedures for the facility;
28 and 3) adequately supervise the facility's administrator.

1 26. As a result of the above-described negligent acts and omissions by Defendants
2 John and Jane Does 1-5, Ms. Cote suffered injuries as described below.

3 27. At all times mentioned herein, Defendants Five Star and their agents and
4 employees had a duty to employ sufficient nursing staff at Desert Harbor to provide nursing and
5 related services to attain or maintain the highest practicable physical, mental, and psychosocial
6 well-being of each resident, as determined by appropriately prepared resident assessments and
7 individual plans of care.

8 28. Defendants Five Star and their agents and employees owed Ms. Cote the duty to
9 properly assess and diagnose her condition and develop an appropriate care plan to enhance
10 her health and prevent and address those conditions from which she suffered.

11 29. Defendants Five Star and their agents and employees owed Ms. Cote the duty to
12 adequately follow care plans and physicians' orders concerning her treatment and the duty to
13 properly monitor and assess her condition and communicate that condition to her physicians
14 and emergency services as reasonably necessary so that appropriate orders could be obtained.

15 30. Defendants and their agents and employees owed Ms. Cote the duty to create and
16 maintain accurate and adequate records of her assessment, care plan, condition, progress, and
17 treatment.

18 31. Defendants and their agents and employees owed Ms. Cote a duty to adequately
19 screen, evaluate and check references, test for competence, and use reasonable care in
20 selecting management, nurses, nursing assistants, and other personnel to work for them.

21 32. Defendants and their agents and employees owed Ms. Cote a duty to employ,
22 train, and schedule sufficient nurses, nursing assistants, and other personnel to provide
23 adequate care for her.

24 33. Defendants and their agents and employees owed Ms. Cote a duty to provide
25 adequate staff to monitor her condition and to adequately train, motivate, and supervise that
26 staff in performing assessments or planning for her care and safety needs.

27 34. By contract and by accepting Ms. Cote under their care and supervision,
28 Defendants and their agents and employees expressly or impliedly represented to Ms. Cote that

1 Defendants and their agents and employees were ready, willing, and able to undertake and
2 carry out the duties enumerated above.

3 35. During the time Ms. Cote was a patient of Desert Harbor, Defendants and their
4 agents and employees failed to exercise that degree of care, skill and learning expected of
5 health care providers in the professions or classes to which they belong within the State acting
6 reasonably in the same or similar circumstances.

7 36. Defendants and their agents and employees failed to properly assess and
8 diagnose Ms. Cote's condition or develop an appropriate care plan to enhance her health and
9 prevent and address those conditions from which she suffered.

10 37. Defendants and their agents and employees failed to adequately follow care plans
11 and physicians' orders concerning Ms. Cote's treatment and failed to properly monitor and
12 assess her condition and communicate that condition to her physicians so that appropriate
13 orders could be obtained.

14 38. Defendants and their agents and employees failed to create and maintain
15 accurate and adequate records of Ms. Cote's assessment, care plan, condition, progress, and
16 treatment.

17 39. Defendants and their agents and employees failed to properly administer care to
18 Ms. Cote, including, but not limited to, failing to provide proper monitoring, assessment,
19 pressure management, wound care, infection control, nutrition and hydration, and failed to
20 educate her and her family and physician regarding her illnesses and risks of injury.

21 40. Upon information and belief, while Ms. Cote was at Desert Harbor, she developed
22 a large pressure ulcer on her sacrum which became infected with Methicillin-resistant
23 *Staphylococcus aureus* (MRSA). Said pressure ulcer and its failure to heal resulted from
24 Defendants' failure to provide adequate care to Ms. Cote.

25 41. The above-described breaches constituted abuse and neglect of a vulnerable or
26 incapacitated adult as those terms are defined in A.R.S. §46-451 *et seq.*

27 42. The above described breaches resulted in part from Defendants' failure to employ,
28 train and schedule sufficient nurses, nursing assistants, and other personnel to provide

adequate care for Ms. Cote.

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2 43. The above-described breaches resulted in part from Defendants' failure to provide
3 adequate staff to monitor Ms. Cote's condition and to adequately train, motivate and supervise
4 that staff in performing assessments or planning for her care needs.

5 44. The above-described breaches resulted in part from Defendants' failure to
6 adequately fund Desert Harbor's operating budget including the direct care staff budget, and
7 from Defendants' failure to adequately supervise and manage the facility to monitor and keep
8 track of the quality of care in the facility, and take those steps necessary to correct deficiencies
9 therein, and to communicate candidly with regulatory agencies the status of health care
10 deficiencies so as to avoid a pattern of negligent care, neglect and abuse of residents.

11 45. As a result of said abuse, neglect, and failures to exercise reasonable care, Ms.
12 Cote suffered a large sacral pressure ulcer which became infected with MRSA, became
13 malnourished and dehydrated, required prolonged medical care, endured great pain and
14 suffering, and an untimely death.

15 46. As a result of said abuse, neglect, and failures to exercise reasonable care,
16 Plaintiffs Catherine Cote and Daniel Cote suffered loss of consortium of their mother, Doris L.
17 Cote, and have already suffered and will in the future continue to suffer pain, grief, sorrow,
18 anguish, stress, shock and mental suffering.

19 47. Upon information and belief, at all times mentioned herein Defendant Maria
20 Parham was the Administrator/Executive Director of Desert Harbor and owed Ms. Cote a variety
21 of duties under Federal and State statutes and regulations, and the common law.

22 48. As Administrator/Executive Director of Desert Harbor, Defendant Parham owed
23 Ms. Cote a duty to employ, train and schedule sufficient personnel to provide adequate care for
24 her.

25 49. Among the duties Defendant Parham owed Ms. Cote was the duty to provide
26 adequate staff to monitor her condition and to adequately train, motivate and supervise that staff
27 in performing assessments or planning for her care and safety needs.

28 50. Among the duties Defendant Parham owed Ms. Cote was the duty to adequately

1 supervise the care given to Ms. Cote and to ensure that such a system of care was in place and
2 properly implemented so that Ms. Cote's health and safety were maintained.

3 51. Among the duties Defendant Parham owed Ms. Cote was the duty to ensure that
4 Desert Harbor was in compliance with Arizona regulations governing assisted living facilities,
5 to take those steps necessary to correct deficiencies and reported complaints within Desert
6 Harbor, and to communicate candidly with regulatory agencies the status of health care
7 deficiencies so as to avoid a pattern of neglect, negligent care, and abuse of residents.

8 52. Defendant Parham failed to adequately supervise the care given to Ms. Cote and
9 failed to adequately employ, train and supervise the staff of Desert Harbor to monitor her
10 condition and to ensure that her care and safety needs were met.

11 53. Defendant Parham failed to ensure that Desert Harbor was in compliance with
12 applicable Federal and State statutes and regulations and failed to take those steps necessary
13 to correct the deficiencies within Desert Harbor.

14 54. As a result of Defendant Parham's negligence as described above, Ms. Cote
15 developed suffered a large sacral pressure ulcer which became infected with MRSA, became
16 malnourished and dehydrated, required prolonged medical care, and endured great pain and
17 suffering, and eventually, an untimely death.

18 COUNT ONE

19 **(Violation of A.R.S. §46-455 by all Defendants)**

20 55. All allegations set forth above are incorporated by reference as if fully set forth
21 herein.

22 56. The acts and omissions of all Defendants constitute a breach of the
23 above-enumerated duties and a deviation from the appropriate standard of care and the
24 reckless disregard for the needs of Ms. Cote, constituting abuse and neglect of a vulnerable
25 adult, as defined by statute, giving rise to a cause of action under A.R.S. §46-455, and justifying
26 an award of compensatory and punitive damages, and attorneys' fees and related expenses.

27 57. The above-described breaches, abuse and neglect are representative of a pattern
28 of abuse and neglect of incapacitated and vulnerable adults as evidenced by previous incidents,

1 lack of appropriate staffing, and ongoing patterns of abuse and/or neglect of residents at Desert
2 Harbor as noted above, as those terms are defined by A.R.S. §46-451, justifying investigation
3 by the Court and Plaintiff into the operations and pattern of abuse and neglect of residents and
4 other wrongdoing, and such other penalties, injunctions and orders as the Court deems
5 appropriate.

6
7 **COUNT TWO**

8 **(Negligence by all Defendants)**

9 58. All allegations set forth above are incorporated by reference as if fully set forth
10 herein.

11 59. At all times pertinent, all named Defendants owed a duty to exercise reasonable
12 care in caring for Ms. Cote and providing for her health care needs.

13 60. By reason of the acts and omissions set forth above, Defendants breached their
14 duty to Ms. Cote, which breaches resulted in her injury and wrongful death.

15 61. The acts and omissions by Defendants constitute negligence by reason of failure
16 to abide by and adhere to the standard of care governing health care providers in their
17 respective fields.

18 62. The acts and omissions by Defendants constitute negligence per se by reason of
19 failure to abide by and adhere to provisions of Federal and State law governing skilled nursing
20 facilities, and residents' rights in such facilities.

21 63. The acts and omissions by Defendants constitute the deliberate or reckless
22 disregard for the well-being of Ms. Cote, justifying an award of punitive or exemplary damages.

23 64. As a proximate result of the acts and omissions by Defendants, including
24 Defendants' reckless disregard of the health and safety of Ms. Cote, she developed a Stage IV
25 pressure ulcer, developed infection, and suffered general deterioration and great physical pain,
26 and eventually, an untimely death.

27 65. As a result of said abuse, neglect, and failures to exercise reasonable care,
28 Plaintiffs Catherine Cote and Daniel Cote suffered loss of consortium of their mother, Doris L.

1 Cote, and have already suffered and will in the future continue to suffer pain, grief, sorrow,
2 anguish, stress, shock and mental suffering.

3
4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiffs pray for Judgment against Defendants, jointly and severally, and
6 each of them, including:

- 7 A. For compensatory damages in a reasonable and appropriate amount, awarded
8 to the Estate of Doris L. Cote for her pain and suffering and other economic and
9 non-economic damages;
- 10 B. For compensatory damages in a reasonable and appropriate amount, awarded
11 to survivors of Doris L. Cote for her wrongful death;
- 12 C. For punitive damages awarded to the Estate of Doris L. Cote in a reasonable and
13 appropriate amount pursuant to A.R.S. §46-455(H);
- 14 D. For punitive damages awarded to survivors of Doris L. Cote in a reasonable and
15 appropriate amount pursuant to A.R.S. §46-455(H);
- 16 E. For Plaintiffs' costs and expenses in prosecuting this matter;
- 17 F. For Plaintiffs' reasonable attorneys' fees pursuant to A.R.S. §46-455(H); and
- 18 G. For such further relief, orders, and injunctions as the court deems appropriate.

19 DATED this 27th day of July, 2012.

20 UDALL, SHUMWAY & LYONS, P.L.C.
21 and
22 LLOYD & ROBINSON, P.L.L.C.

23 By /s/ H. Micheal Wright
24 H. Micheal Wright
25 Arthur E. Lloyd
26 Lincoln M. Wright
27 *Attorneys for Plaintiff*

28 ORIGINAL electronically filed this
27th day of July, 2012 with the Clerk of the Court.

1 Copy of the foregoing mailed
this 27th day of July, 2012, to:

2 Arthur E. Lloyd
LLOYD & ROBINSON, PLLC
3 113 E Frontier St
Payson, AZ 85541-2624
4 *Co-Counsel for Plaintiff*

5

6 By /s/ H. Micheal Wright

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