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**F I L E D**  
Clerk of the Superior Court

DEC 17 2019

By: R. Babers, Deputy

5 Attorneys for Plaintiff JANE DOE  
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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO, DOWNTOWN CENTRAL BRANCH**

10  
11 JANE DOE, an individual [whose true identity  
is protected from disclosure per Court Order],  
12 who brings suit by and through her personal  
legal representative/DPOA, JANET DOE  
13 [whose true identity is also protected from  
disclosure per Court Order],

14  
15 as Plaintiff,

16 v.

17 PROVIDENCE GROUP, INC.; BALBOA  
HEALTHCARE, INC. dba BALBOA  
18 NURSING & REHABILITATION CENTER,  
a California Licensed Skilled Nursing Facility;  
19 and ROES 1-25, inclusive,

20 as Defendants.  
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Case No.: 37-2019-00068378-CU-PO-CTL

**PLAINTIFF'S COMPLAINT FOR CIVIL DAMAGES**

1. *Negligence/Premises Liability*
2. *Statutory Neglect of an Elder in Violation of California Welfare & Institutions Code §15600, et seq.*

23 **COMES NOW** plaintiff JANE DOE, an individual [whose true identity is protected from  
24 disclosure per Court Order], who by and through her personal legal representative/DPOA, JANET  
25 DOE [whose true identity is also protected from disclosure per Court Order], respectfully alleges  
26 the following against the defendants named herein:

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I.

**GENERAL ALLEGATIONS**

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3 1. At the time when all of the tortious acts alleged herein were committed against her,  
4 plaintiff JANE DOE was a resident of BALBOA HEALTHCARE, INC. dba BALBOA NURSING  
5 & REHABILITATION CENTER, a Skilled Nursing Facility, located in San Diego, California,  
6 County of San Diego. Plaintiff JANE DOE brings suit against all defendants named herein with the  
7 assistance of her daughter JANET DOE, who is the legal-personal representative/DPOA for plaintiff  
8 JANE DOE. As authorized per Court Order, both plaintiff JANE DOE and her legal-personal  
9 representative/DPOA, JANET DOE, do hereby bring suit under alias so as to protect their true  
10 identity due to nature of the acts committed against JANE DOE and the nature of the claims being  
11 charged herein against defendants.

12 2. Upon information and belief, at all times mentioned herein, defendant BALBOA  
13 HEALTHCARE, INC. dba BALBOA NURSING & REHABILITATION CENTER ("BALBOA")  
14 was, and still is, a for-profit business located at 3520 Fourth Avenue, San Diego, CA 92103, engaged  
15 in operating as a Skilled Nursing Facility licensed under the laws of the State of California, with  
16 specific license to provide residential living accommodations for up to 194 beds/residents.

17 3. Upon information and belief, defendant PROVIDENCE GROUP, INC., conducts its  
18 operations from its primary place of business located in 140 N. Union Ave., Ste. 320, Farmington,  
19 UT, 84025, was at all times herein mentioned, was, and still is, the owner and operating management  
20 company of BALBOA, and also was, and still is, the management company for, and/or owner of,  
21 the premises and building located at 3520 Fourth Avenue, San Diego, CA 92103.

22 4. Upon information and belief, defendants PROVIDENCE GROUP, INC. and  
23 BALBOA operate under a common vision, business strategy, joint enterprise, and management  
24 structure to engage in diverse business activities including investment in physical business facilities.  
25 Plaintiff JANE DOE is informed and believes and thereon alleges that at all times material hereto  
26 and mentioned herein, each the business defendants sued herein including PROVIDENCE GROUP,  
27 INC. and BALBOA, were the owner, operator, parent company, management company, agent,  
28 servant, employer, joint venture, partner, subsidiary, alias, and/or alter ego of each of the remaining

1 business defendants and were, at all times, acting within the purpose and scope of such vision,  
2 business strategy, joint enterprise, ownership, subsidiary, holding company, agency, servitude, alias  
3 and/or alter ego and with the authority to consent, approve, control, influence, and ratify the actions  
4 of each of the other business defendants sued herein.

5           5.       At all times mentioned herein, plaintiff JANE DOE was under the custodial care,  
6 supervision, and protections of defendants PROVIDENCE GROUP, INC. and BALBOA, and both  
7 defendants PROVIDENCE GROUP, INC. and BALBOA, and their officers, directors, principals,  
8 management, staff, managing agents and employees, and each of them, including facility managing  
9 agents and staff, were directly responsible for providing for the welfare and safety of their resident  
10 plaintiff JANE DOE. Upon information and belief, it is alleged that the acts of both of these  
11 defendants, their officers, directors, principals, management, staff, managing agents and employees  
12 were a direct, proximate, and substantial factor in causing plaintiff JANE DOE to suffer serious  
13 personal injury, severe emotional distress, harm and damages.

14           6.       Defendants ROES 1 through 25, inclusive, are all sued herein under fictitious names  
15 and their true names and capacities are unknown to plaintiff at this time. When the true names and  
16 capacities of these ROES defendants 1 through 25 are ascertained, plaintiff will amend her  
17 Complaint as permitted by law by inserting their true names and capacities. Plaintiff is informed  
18 and believes and thereon alleges that each of the fictitiously named defendants is responsible in  
19 some manner for the occurrences herein alleged, and that plaintiff's damages were directly,  
20 proximately, and substantially caused by these ROES defendants as well as those defendants named  
21 herein. Each reference set forth in this Complaint to "defendant," "defendants," or a specifically  
22 named defendant refers to those defendants named herein as well as those sued under the fictitious  
23 names ROES 1 through 25.

24           7.       Venue is proper in this jurisdiction in that the acts giving rise to this lawsuit, which  
25 are described more fully below, occurred within this Court's jurisdictional area.

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II.

**FACTS RELEVANT TO ALL CAUSES OF ACTION**

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3 8. In 2014, JANE DOE was admitted into BALBOA. In admitting plaintiff JANE DOE  
4 into their facility, defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through  
5 25, agreed to provide safe living accommodations to protect for the safety and well-being of JANE  
6 DOE. Despite undertaking such obligations, defendants PROVIDENCE GROUP, INC., BALBOA,  
7 and/or ROES 1 through 25, failed to provide safe living accommodations for JANE DOE.  
8 Furthermore, defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25,  
9 failed to protect for the safety and well-being of JANE DOE.

10 9. During the evening of October 26, 2019 and into the early morning hours of October  
11 27, 2019, defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25, failed  
12 to secure their premises so as to prevent invitees, guests, and/or unauthorized persons, from entering  
13 their business premises. Specifically, during the evening of October 26, 2019 and into the early  
14 morning hours of October 27, 2019, defendants PROVIDENCE GROUP, INC., BALBOA, and  
15 ROES 1 through 25, left their back door open thereby allowing access into their facility without  
16 notice by anyone. In addition, defendants PROVIDENCE GROUP, INC., BALBOA, and ROES 1  
17 through 25, were sufficiently understaffed so as to cause a failure on the part of the on-duty staff at  
18 defendants PROVIDENCE GROUP, INC., BALBOA, and ROES 1 through 25's facility that  
19 evening to fail to recognize both the presence of persons having entered their premises, and  
20 traversing inside their physical premises, that night.

21 10. At approximately 3:00am on October 27, 2019, a transient by the name of LUSEAN  
22 ARLINE entered the unlocked and unsecure residential facility where plaintiff JANE DOE resided  
23 as a long term custodial care resident of PROVIDENCE GROUP, INC., BALBOA, and ROES 1  
24 through 25, through an unlocked back door, made his way up to the second floor of the facility, did  
25 so unnoticed by any staff on duty that night, and entered the room of JANE DOE. While JANE  
26 DOE was asleep in her bed, LUSEAN ARLINE intentionally and forcibly unclothed her, mounted  
27 her, broke her arm, engaged in sexual conduct with her, attempted to rape her, and did so all without  
28 any notice or awareness by staff of defendant PROVIDENCE GROUP, INC., BALBOA, and ROES

1 1 through 25, until such time that a roommate of JANE DOE yelled out, in utter shock and fear, for  
2 help. At that time, and only at that time, did LUSEAN ARLINE stop his acts of forcibly and sexually  
3 assaulting JANE DOE, attempt to hide within the room of JANE DOE, and then run out of JANE  
4 DOE's second-floor room unclothed and down a long hallway, past the second-floor nurses station,  
5 down the stairwell, and out of the unlocked and unsecure premises that are owned, operated, and  
6 controlled by defendants PROVIDENCE GROUP, INC., BALBOA, and ROES 1 through 25.

7 11. The conduct of LUSEAN ARLINE in committing the acts of intentionally touching  
8 plaintiff JANE DOE *in any way*, and particularly in forcibly unclothing her, mounting her, and  
9 attempting to rape her, were, no doubt, oppressive, malicious, despicable, egregious, vile,  
10 contemptuous, and reprehensible. Yet but for the utterly negligent, reckless, and willful failures on  
11 the part of defendants PROVIDENCE GROUP, INC., BALBOA, and ROES 1 through 25, to  
12 reasonably secure their facility, prevent persons from unknowingly entering their facility, failing to  
13 provide sufficient staffing to monitor their facility, and failing to protect for the safety and well-  
14 being of their residents, including resident JANE DOE, LUSEAN ARLINE would not have been  
15 able to gain entry into defendants' facility, make his way to the second floor of the facility, roam  
16 the second-floor hallway of the facility, and enter the second floor room of JANE DOE, *all*  
17 *unnoticed*, and the egregious acts that were committed against JANE DOE by LUSEAN ARLINE  
18 would not have occurred.

19 12. Upon information and belief, the Officers, Directors, and Managing Agents of  
20 defendants PROVIDENCE GROUP, INC., BALBOA, and ROES 1 through 25, actually knew prior  
21 to the events of October 27, 2019, that their facility lacked security measures, that the back door  
22 was commonly -- on a regular basis -- left open even through the late evening hours and into the  
23 early morning hours, and that persons would routinely enter their premises through the back door.  
24 Upon information and belief, despite such actual knowledge, these officers, directors, and head  
25 administration of defendants PROVIDENCE GROUP, INC., BALBOA, and ROES 1 through 25,  
26 made a conscious decision not to provide certain security measures based upon the basis of  
27 "budgeting," and so as to maximize profits in the business enterprises they owned, operated, and  
28 were controlled by defendants PROVIDENCE GROUP, INC., BALBOA, and ROES 1 through 25.



1 the presence of homeless and transient persons upon their premises created a risk of harm towards  
2 residents and employees by engaging in harmful acts towards said residents and employees by,  
3 among other things, loitering upon their premises, trespassing among their premises, and causing  
4 fear of harm towards residents and employees of defendants' facility and premises, including  
5 engaging in criminal acts in the neighborhood including acts of loitering, trespass, battery, assault,  
6 all which acts have occurred, could further occur, and would further occur, upon their premises if  
7 proper security measures were not undertaken to properly secure their premises.

8 17. The breaches of the above described general duties of care owed by defendants  
9 PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25, were a substantial factor in  
10 causing plaintiff JANE DOE to suffer serious personal injury, severe emotional distress, medical  
11 damages, and other incidental damages.

12 18. As a direct and proximate result of the above described breaches of duties of care by  
13 defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25, plaintiff JANE  
14 DOE suffered serious personal injury, severe emotional distress, medical damages, and other  
15 incidental damages, and is thus entitled to recover damages against defendants PROVIDENCE  
16 GROUP, INC., BALBOA, and/or ROES 1 through 25, as authorized under law, all in amount  
17 according to proof at trial.

18 19. Upon information and belief, and in addition to the general breaches of care pled  
19 hereinabove, defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25,  
20 further acted recklessly with regard to plaintiff JANE DOE, and with sufficient willful and conscious  
21 disregard for the rights, safety, and well-being of plaintiff JANE DOE in failing to provide for a safe  
22 and secure premises free of criminal activity. To wit, defendants PROVIDENCE GROUP, INC.,  
23 BALBOA, and/or ROES 1 through 25, and their Officers, Directors, and Managing Agents had  
24 actual and/or constructive knowledge and notice that their facility posed certain specific security  
25 risks and dangers presented by third parties who entered defendants' premises, including homeless  
26 and transient persons like LUCEAN ARLINE, that the intentional dangerous and harmful acts of  
27 third parties upon their premises would result in harm to their residents and/or employees to the  
28 extent that security measures were not put in place – which they were not – including the proper

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1 staffing of defendants' facility -- of which sufficient staffing was not provided during particularity,  
2 the night shift -- so as to protect the health, safety and welfare of their employees and residents,  
3 including plaintiff JANE DOE.

4 20. As a result of defendants' breaches being carried out with reckless, neglectful,  
5 malicious and oppressive intent which, as pled above, was done in conscious disregard for plaintiff's  
6 rights, safety and well-being and all with the intent to maximize the profitability of defendants'  
7 enterprises, plaintiff JANE DOE is entitled to an award of punitive damages under *California Civil*  
8 *Code §3294* against PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25, and  
9 each of them, in amount according to proof at trial.

10 *Second Cause of Action*

11 *Statutory Neglect of an Elder; Violation of Welfare & Institutions Code §15600, et seq.*

12 *(Plaintiff JANE DOE vs. DEFENDANTS PROVIDENCE*  
13 *GROUP, INC., BALBOA and ROES 1-25)*

14 21. Plaintiff hereby incorporates by reference each and every allegation set forth above  
15 as though fully set forth herein.

16 22. Defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25,  
17 as owners and operators of long term custodial care facility BALBOA, knew that they had the duty  
18 to provide for and safety and well-being of their residents, including plaintiff JANE DOE, and knew  
19 that the health and safety of their residents, including JANE DOE, would be placed at great risk if  
20 they failed to carry out such duties. Moreover, Defendants PROVIDENCE GROUP, INC.,  
21 BALBOA, and/or ROES 1 through 25, specifically knew that their failure to comply with such  
22 duties to provide safe and secure premises for JANE DOE could result in serious personal injury,  
23 severe emotional distress, and/or death. Despite such, and without limiting the generality of the  
24 foregoing, defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25, and  
25 each of them, recklessly, and with deliberate indifference and conscious disregard for the safety and  
26 well-being of plaintiff JANE DOE, breached the duties of care that they owed to JANE DOE by:

27 Count 1 – recklessly failing to provide safe premises;

28 Count 2 – recklessly failing to implement proper security measures;



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Count 2 – recklessly failing to provide proper security measures;

Count 4 – recklessly failing to provide secure premises in protecting for the welfare and safety of their residents, including for plaintiff JANE DOE.

Count 5 – recklessly failing to prevent JANE DOE from being subjected to acts of assault and battery;

Count 6 – recklessly failing to ensure that JANE DOE was not subject to acts of physical abuse while under their direct supervision;

Count 7 – recklessly and purposefully failing to employ and maintain an adequate number of night staff personnel sufficient to protect for the safety of their facility residents, all done with the purpose of reducing “overhead” and maximizing profits;

Count 8 – recklessly failing to ensure that JANE DOE was not subject to acts of neglect, as that term is defined under *California Welfare and Institutions Code §15610.57*, while under their direct supervision; and

Count 9 – recklessly failing to ensure that JANE DOE was not subjected to acts of abuse, as that term is defined under *Welfare and Institutions Code §15610.07*, while under their care and supervision.

23. The reckless neglect and willful misconduct alleged herein against defendants was carried out with a conscious disregard for the safety and well-being of plaintiff JANE DOE, and was actually committed and/or ratified by managing agents of defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25’s, including, but not limited to defendants’ Officers, Directors, Administrators and Directors of Nursing Services.

24. As a direct and proximate result of defendants’ reckless neglectful conduct, plaintiff JANE DOE suffered serious personal injury, severe emotional distress, medical damages, and other incidental damages, and is thus entitled to recover damages against defendants PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25, in amount according to proof at trial.

25. As a further result of defendants’ reckless, neglectful, malicious and oppressive conduct which, as pled above, was done in conscious disregard for plaintiff’s safety and well-being, plaintiff JANE DOE is entitled to an award of punitive damages under *California Civil Code §3294*

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1 against PROVIDENCE GROUP, INC., BALBOA, and/or ROES 1 through 25, and each of them,  
2 in amount according to proof at trial.

3 **WHEREFORE**, based upon all of the allegations set forth above, but specific as to plaintiff  
4 JANE DOE's First Cause of Action for Negligence/Premises Liability against defendants  
5 PROVIDENCE GROUP, INC., and BALBOA HEALTHCARE, INC. dba BALBOA  
6 NURSING & REHABILITATION CENTER, and ROES 1 through 25, plaintiff JANE DOE  
7 prays that judgment be entered in her favor as against defendants PROVIDENCE GROUP, INC.,  
8 and BALBOA HEALTHCARE, INC. dba BALBOA NURSING & REHABILITATION  
9 CENTER, and ROES 1 through 25, and each of them, as follows:

10 1. For all legally recoverable compensatory special, general, economic, consequential,  
11 and related damages, in the amount of \$25,000,000.00 or amount according to proof at trial of this  
12 matter;

13 2. For punitive damages pursuant to *Civil Code §3294*, in addition to all other  
14 recoverable damages, in an amount according to proof at trial of this matter;

15 3. For interest at the legal rate permitted by law;

16 4. For costs of suit incurred herein; and

17 5. For any and all other relief that the Court deems just and proper.

18 **WHEREFORE**, based upon all of the allegations set forth above, but specific to plaintiff  
19 JANE DOE's Second Cause of Action for Statutory Elder Neglect; Violation of Welfare &  
20 Institutions Code §15600 et seq., against defendants PROVIDENCE GROUP, INC., and BALBOA  
21 HEALTHCARE, INC. dba BALBOA NURSING & REHABILITATION CENTER, and ROES 1  
22 through 25, plaintiff JANE DOE prays that judgment be entered in her favor as against defendants  
23 PROVIDENCE GROUP, INC., and BALBOA HEALTHCARE, INC. dba BALBOA NURSING &  
24 REHABILITATION CENTER, and ROES 1 through 25, and each of them, as follows:

25 1. For all legally recoverable compensatory special, general, economic, consequential,  
26 and related damages, in an amount of \$25,000,000.00 or amount according to proof at trial of this  
27 matter;

28 2. For punitive damages pursuant to *Civil Code §3294*, in addition to all other

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- 1 recoverable damages, in an amount according to proof at trial of this matter;  
2       3. For costs of litigation pursuant to *Welfare and Institutions Code §15657(a)*, in an  
3 amount according to proof after due proceedings;  
4       4. For attorneys' fees pursuant to *Welfare and Institutions Code §15657(a)*, in an  
5 amount according to proof after due proceedings;  
6       5. For interest at the legal rate permitted by law;  
7       6. For costs of suit incurred herein; and  
8       7. For any and all other relief that the Court deems just and proper.

9 Respectfully submitted,

10 DATED: December 16, 2019

BERMAN & RIEDEL, LLP

By: 

William M. Berman, Esquire  
Harlan J. Zaback, Esquire  
Attorneys for Plaintiff JANE DOE

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