

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

SEA VIEW RETREAT, INC. A/K/A SEA
VIEW CONVALESCENT AND NURSING
HOME A/K/A SEA VIEW SKILLED
NURSING AND REHABILITATION; AND

STEPHEN COMLEY II,

Defendants.

COMPLAINT

INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, brings this civil action against Sea View Retreat, Inc. a/k/a Sea View Convalescent and Nursing Home a/k/a Sea View Skilled Nursing and Rehabilitation ("Sea View") and its owner Stephen Comley II ("Comley") (collectively, "Defendants").

2. The Commonwealth alleges that, from at least February 27, 2020 through July 24, 2020, Sea View, which was a licensed Massachusetts Department of Public Health ("DPH") nursing facility pursuant to G.L. c. 111, § 71, knowingly and/or recklessly failed to comply with existing state and federal statutes, rules, and regulations that provided protection to or for the residents of long-term care facilities. Specifically, Sea View and Comley, in his role as the owner of Sea View, failed to implement facility-wide infection control and prevention procedures such as: (a) providing staff with SARS-CoV-2 virus ("COVID-19") competency training, (b) using personal protective equipment ("PPE") properly, (c) screening staff at entry prior to engaging in resident care, (d) completing baseline and surveillance COVID-19 testing of residents, (e) creating

separate staffing teams dedicated to COVID-19 positive residents and/or consistent assignments of staff to residents, (f) assessing and monitoring residents' vital signs and temperatures with the required frequency per public health guidance, and (g) properly cohorting residents.

3. With respect to cohorting and testing in particular, Defendants knowingly and/or recklessly failed to (1) cohort or isolate multiple residents who were suspected, symptomatic, and/or known to have tested positive for COVID-19, which resulted in those residents' roommates contracting, and in at least one circumstance, dying from, COVID-19; and (2) timely test a resident for COVID-19 upon that resident exhibiting signs and symptoms of COVID-19, which substantially increased the likelihood of harm to that resident and his roommates.

4. Through these acts and/or failures to act, Defendants were also knowingly noncompliant with and/or recklessly disregarded the rules, regulations, policies, guidance, and requirements they were required to comply with as a nursing facility provider participating in the Massachusetts Medicaid Program, MassHealth. Such noncompliance resulted in the submission of false claims to MassHealth for services that violated material conditions of payment.

5. Through these acts and/or failures to act, Sea View, and its owner/administrator Comley, as DPH licensees, have violated the Massachusetts False Claims Act, G.L. c. 12, §§ 5A and 5B *et seq.*, the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2(a), 940 C.M.R. § 4.02, and G.L. c. 111, § 72K. For these statutory and regulatory violations, the Commonwealth seeks damages, civil monetary penalties, and injunctive relief.

6. Defendants' above-described conduct also constituted unjust enrichment and a breach of Sea View's MassHealth Nursing Facility Provider Contract, for which the Commonwealth seeks all applicable damages plus interest associated with such breach pursuant to G.L. c. 231, § 6C.

JURISDICTION AND VENUE

7. The Attorney General brings this action pursuant to G.L. c. 93A, §§ 2, 4, G.L. c. 111, § 72K, and G.L. c. 12, §§ 5, 5C, and 10.

8. The Commonwealth has satisfied its pre-suit notice obligations under G.L. c. 93A, § 4 by mailing and e-mailing a demand letter to Sea View and Comley on November 16, 2021. Comley acknowledged receipt on November 17, 2021.

9. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4, G.L. c. 111, § 72K, and G.L. c. 12, § 5C and over the Defendants pursuant to G.L. c. 223A, §§ 2 and 3.

10. Venue is proper in Suffolk County under G.L. c. 223, § 5, G.L. c. 93A, § 4, and G.L. c. 12 § 5C. G.L. c. 223, § 5 provides that any civil action in which the Commonwealth is plaintiff or in which money due to the Commonwealth is sought to be recovered may be brought in Suffolk County, Massachusetts.

THE PARTIES

11. Plaintiff the Commonwealth of Massachusetts is a sovereign state and body politic duly organized by law and is represented by the Attorney General of the Commonwealth, who brings this action in the public interest and on behalf of the Commonwealth and its citizens.

12. Defendant Sea View was a 62-bed convalescent and nursing facility located at 50 Mansion Drive, Rowley, MA 01969 that offered skilled nursing and rehabilitation care during the relevant time period. Sea View is still an active corporation that has been organized in Massachusetts since at least 1981 with Comley as the only current registered officer. Sea View became a DPH-licensed facility around May 17, 2000. However, on February 18, 2022, DPH conducted a monitoring visit at Sea View and observed during that visit that there were no residents

present and no other signs of nursing home operations. Based on that monitoring visit, DPH treated the facility license as abandoned by the licensee, effective immediately, pursuant to 105 C.M.R. § 153.028(G). Sea View was also formerly an active provider enrolled in the Massachusetts Executive Office of Health and Human Services, Office of Medicaid Program, known as MassHealth, and executed a MassHealth Nursing Facility Provider Contract effective throughout the relevant time period. Sea View began providing services to MassHealth members on or around January 31, 2002.

13. Defendant Comley is a resident of the Commonwealth of Massachusetts. Defendant Comley has been the owner of Sea View Retreat, Inc. since at least January 2002. Defendant Comley is also believed to have served as the Administrator of Sea View starting from approximately mid-June 2020 within the meaning of 940 C.M.R. § 4.01 (an administrator is the “person charged with the general administration of a nursing home, rest home, or other long-term care facility, and his/her agents or employees . . .”).

14. Because Sea View was a DPH-licensed facility wholly owned by Comley and Comley is its only registered agent and corporate officer, both Defendants are DPH licensees within the meaning of 940 C.M.R. § 4.01 (a licensee is “any person, corporation, or other entity holding at least a 10% ownership interest in a facility that is licensed by the Department of Public Health as a long-term care facility and his/her or its agents or employees.”).

STATUTORY AND REGULATORY FRAMEWORK

I. MASSHEALTH CLAIMS SUBMISSION AND BILLING

15. During the relevant time period, February 27, 2020 through July 24, 2020, MassHealth paid Defendant Sea View for health care benefits, including nursing facility services

provided to MassHealth members, on a fee-for-service basis. *See* 130 C.M.R. § 450.105(A)(1)(aa).

16. Such benefits are paid for using funds that have been provided by the United States government and the Commonwealth through MassHealth.

17. Providers such as Sea View contract with MassHealth to provide nursing facility services to MassHealth members, which are often billed to MassHealth at a *per diem* service rate.

18. All claims submitted by providers for nursing home services provided to any MassHealth beneficiary must comply with MassHealth and DPH regulations, including those set forth in 130 C.M.R. § 450.00 *et seq.*, 130 C.M.R. § 456.00 *et seq.*, 105 C.M.R. § 150.00 *et seq.*, and 105 C.M.R. § 153.00 *et seq.*

19. Every provider that submits claims to MassHealth certifies when submitting a claim for payment that “the information submitted in, with, or in support of the claims is true, accurate, and complete.” 130 C.M.R. § 450.223(C)(2)(e). Therefore, providers impliedly certify that they are complying with applicable regulations when submitting claims for payment.

20. Similarly, pursuant to Sea View’s Nursing Facility Provider Contract with MassHealth, Sea View must comply with, and be subject to, federal and state statutes, regulations, and other applicable laws governing its participation in MassHealth, including any additional rules, policies, or provider bulletins issued by MassHealth governing nursing facility program providers. Moreover, Sea View agreed to provide nursing facility services in conformance with DPH and MassHealth requirements and program regulations at 130 C.M.R. 456.000 *et seq.*

21. Under the Massachusetts False Claims Act, G.L. c. 12, § 5B (“MFCA”), a “claim” is a request or demand for money or property that is either presented to the government directly or is made to a contractor and paid on behalf of, or to advance an interest of, the government. *See* G.L. c. 12, § 5A. All requests for payment or reimbursement made by Sea View on behalf of a MassHealth member are “claims” for purposes of the MFCA and are “false claims” if knowingly submitted to MassHealth for payment despite being noncompliant with MassHealth regulations.

22. Claims submitted to MassHealth are often submitted electronically in monthly batches by nursing facility providers. Due to the enormous volume of claims being submitted by all MassHealth providers, MassHealth utilizes a semi-automated billing and payment system that may automatically deny or approve a claim based on certain information submitted by the provider based on pre-programmed system edits created by a computer algorithm.

23. In short, because MassHealth providers submit claims certifying that such claims are compliant with all material conditions of payment, MassHealth providers bill and are paid largely on an honor system. If MassHealth or the Massachusetts Attorney General’s Office (“AGO”) later learn that the claims should not have been paid – whether due to fraud or for any other reason – they can use other methods to recoup the reimbursement of these claims, which have already been paid to the provider.

24. The AGO has access to claims data submitted by Sea View through the Medicaid Management Information System (“MMIS”). This database allows AGO investigators to export and review reports of claims information submitted to MassHealth by Sea View based on its billing and servicing provider ID.

25. For each MassHealth member for whom Sea View billed services, Sea View submitted one claim for payment each month for all services provided to the MassHealth member that month, and MassHealth paid Sea View monthly reimbursement payments accordingly. For the relevant months of March through July 2020, Sea View was paid \$585,303.55 by MassHealth for 231 claims for services submitted to MassHealth.

II. AS A NURSING FACILITY LICENSED IN MASSACHUSETTS AND PARTICIPATING IN MASSHEALTH, SEA VIEW WAS REQUIRED TO COMPLY WITH MULTIPLE FEDERAL AND STATE LONG-TERM CARE REGULATIONS.

26. Sea View participated in trade or commerce because it offered for sale skilled nursing and rehabilitation services that directly affect the people of the Commonwealth.

27. Sea View was a “[f]acility,” “skilled nursing facility (SNF),” and a “[l]ong [t]erm [c]are [f]acility,” as those terms are defined by federal and state regulations. *See* 42 C.F.R. §§ 483.1 and 483.5; 105 C.M.R. § 150.001; 940 C.M.R. § 4.01.

28. Sea View participated in the federal Medicare and federal/state Medicaid programs by accepting reimbursement from Medicare and Medicaid for services provided to MassHealth members.

29. Skilled nursing facilities participating in Medicare and Medicaid must comply with the “Requirements for Long Term Care Facilities” set forth at 42 C.F.R. §§ 483.1 – 483.480. These federal regulations state that a “facility must ensure residents receive treatment and care in accordance with professional standards of practice” 42 C.F.R. § 483.25. Further, such regulations provide that “[a] facility must ensure that licensed nurses have the specific competencies and skill sets necessary to care for residents’ needs.” 42 C.F.R. § 483.35(A)(3).

30. Importantly, long term care facilities must also comply with 42 C.F.R. § 483.80, governing “Infection Control” requirements. Such regulations expressly state that a “facility must establish and maintain an infection prevention and control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections.” Specifically, “[t]he facility must establish an infection prevention and control program (IPCP) that must include, at a minimum”:

- a) “A system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents.” 42 C.F.R. § 483.80(a)(1).
- b) “A system of surveillance designed to identify possible communicable diseases or infections before they can spread to other persons in the facility.” 42 C.F.R. § 483.80(a)(2)(i).
- c) “Standard and transmission-based precautions to be followed to prevent spread of infections.” 42 C.F.R. § 483.80(a)(2)(iii).
- d) “When and how isolation should be used for a resident; including but not limited to . . . the type and duration of the isolation, depending upon the infectious agent or organism involved.” 42 C.F.R. § 483.80(a)(2)(iv)(A).

31. In addition, long term care facilities operating in the Commonwealth must comply with the DPH “Standards for Long Term Care Facilities” regulations set forth at 105 C.M.R. § 150.001 *et seq.* This includes 105 C.M.R. § 150.007(A), which states: “All facilities shall provide appropriate, adequate and sufficient nursing services to meet the needs of residents and to ensure preventive measures, treatments, medications, diets, restorative nursing care, activities and related services are carried out, recorded and reviewed.”

32. Further, MassHealth’s long-term care facility regulations at 130 C.M.R. § 456.404, state that all MassHealth participating nursing facilities “must [] be licensed by the Massachusetts Department of Public Health to operate such a facility.” To maintain a DPH license, Sea View must have complied with all DPH regulations and long-term care facility

standards, and maintain its status as a “suitable” licensee. 105 C.M.R. § 153.012. A licensee is “not suitable,” if the “licensee has maintained a substandard level of care, as measured by compliance with applicable licensing regulations in Massachusetts or elsewhere, with applicable federal conditions of participation in Medicare and Medicaid and other pertinent evidence.” 105 C.M.R. § 153.012(A)(7). If a licensee is found “not suitable” to operate a long-term care facility, this constitutes a “full and adequate ground on which to deny, revoke, or refuse to renew a license to operate a long-term care facility.” 105 C.M.R. § 153.014(A).

33. Moreover, MassHealth’s “all provider” regulations expressly state that all MassHealth providers must comply with each provider’s applicable program regulations, in addition to other documents MassHealth promulgates and publishes affecting these programs, including “statements of policy and procedure, conditions of participation, guidelines, [and] provider bulletins.” 130 C.M.R. § 450.102. To accompany its regulations, MassHealth is authorized to issue “provider bulletins, companion guides, or other materials, which will be effective and controlling notwithstanding any MassHealth agency regulations to the contrary.” 130 C.M.R. 450.103(B).

34. Consistent with this authorization, on or around June 1, 2020, MassHealth issued its “MassHealth Nursing Facility COVID-19 Accountability and Support Frequently Asked Questions (FAQ),” which stated that the requirements outlined in its Nursing Facility Bulletins 145 and 146, governing COVID-19 cohorting and testing, respectively, were “mandatory; it is not an optional or voluntary program” and that they “are requirements for all nursing facilities participating in the MassHealth program.” **Exhibit 10** (emphasis in original). It further stated “[t]hese requirements are essential for monitoring infection control policies and staffing to protect against the spread of COVID-19.” *Id.*

35. Each failure to comply with the regulations set forth in paragraphs 29-34, above, is an unfair and deceptive act or practice under G.L. c. 93A. *See* 940 C.M.R. § 4.02(1) (“[i]t shall be an unfair or deceptive act or practice, in violation of . . . G.L. c. 93A, § 2, for a licensee or an administrator: to fail to comply with any existing state or federal statute, rule or regulation which provides protection to or for residents or prospective residents of long-term care facilities.”).

III. TO COMPLY WITH ITS REGULATORY OBLIGATIONS, SEA VIEW NEEDED TO COMPLY WITH DPH, CDC, CMS AND MASSHEALTH GUIDANCE RELATED TO CARING FOR LONG-TERM CARE RESIDENTS DURING THE COVID-19 EMERGENCY

36. Throughout the relevant time period February 27, 2020 through July 24, 2020, DPH, the Centers for Disease Control and Prevention (“CDC”), the U.S. Department of Health and Human Services Centers of Medicare and Medicaid Services (“CMS”), and MassHealth issued and maintained guidance that advised long-term care facilities of expectations, requirements, and recommendations to control COVID-19 infection and prevent and limit transmission, among other necessary measures. Notably, the measures outlined in MassHealth’s nursing facility provider bulletins, were mandatory requirements for nursing facilities enrolled as MassHealth providers.

37. During the Commonwealth’s investigation of the Sea View facility, investigators from the AGO spoke with Sea View’s former Administrator John Tryder (“Tryder”), who told investigators that he received daily updates from the CDC and DPH regarding COVID-19 guidance and he posted those notices around the facility during the relevant time period.

38. Namely, on or around February 27, 2020, DPH issued an advisory letter to long-term care nursing facilities stating DPH and CDC are “closely monitor[ing] the emergence of respiratory illness caused by a novel coronavirus (COVID-19)” and that “[a]ll Massachusetts

healthcare facilities should carefully review the current CDC interim infection control recommendations regarding patients/residents who require or may require evaluation for COVID-19.” **Exhibit 1**. Infection control recommendations included: (1) “Ensure triage procedures . . . are in place at the facility . . . to detect and isolate patients/residents who might require further evaluation for COVID-19”; and (2) “Ensure that healthcare personnel [(“HCP”)] are educated, trained, and have practiced the appropriate use of PPE prior to caring for a patient/resident, including attention to correct use of PPE.” *Id.* (emphasis added).

39. In addition, the February 29, 2020 “CDC Interim Guidance for Healthcare Facilities: Preparing for Community Transmission of COVID-19 in the United States,” advised long-term care facilities, among other things, to “[t]ake steps to prevent known or suspected COVID-19 patients from exposing other patients,” including “[c]reat[ing] an area for spatially separating patients with respiratory symptoms.” **Exhibit 2** (emphasis added). Facilities should also “[e]nsure [staff] are trained on the infection prevention and control recommendations for COVID-19 and proper use of personal protective equipment” and “[d]esignate [dedicated] staff who will be responsible for caring for suspected or known COVID-19 patients.” *Id.*

40. A few weeks later, on March 16, 2020, DPH issued its “Policies and Procedures for Restricting Resident Visitors in Nursing Homes and Rest Homes and Personal Protective Equipment Recommendation Updates during the COVID-19 Outbreak,” which listed the provisions nursing homes “should implement” “to protect the health and safety of residents and staff during [COVID-19] outbreak.” **Exhibit 3**. Such provisions included that “[p]atients with known or suspected COVID-19 should be cared for in a single-person room with the door closed.” *Id.* (emphasis added). In addition, “the nursing home [] must confirm that [] health care worker[s] do[] not have a fever by taking each healthcare worker’s temperature upon arrival. [A]

health care worker's temperature must be 100.3°F or lower for him or her to enter the facility and provide care.” *Id.*

41. On April 6, 2020, DPH released further exhaustive guidance for “Caring for Long-Term Care Residents during the COVID-19 Emergency.” **Exhibit 4.** In particular, such guidance stated that “[a]ll [] nursing homes must be prepared to care for COVID-19 positive residents” and “[a]ll facilities are expected to follow the infection prevention and control practices recommended by DPH and CDC.” *Id.* This included that “[l]ong-term care facilities must separate residents who are positive for COVID-19 from residents who are not, or have an unknown status. Whenever possible, long-term care facilities must establish a dedicated wing or unit that is separate from the rest of the facility and residents to care for COVID-19 positive residents. COVID-19 positive units must be capable of maintaining strict infection control practices and testing protocols.” *Id.* (emphasis added). Further, “[l]ong-term care facilities should ensure all staff are using appropriate PPE when they are interacting with residents” and “[f]or the duration of the declared state of emergency, all long-term care facility personnel should wear a facemask while they are in the facility.” *Id.* Moreover, “[f]ull PPE should be worn per DPH and CDC guidelines for the care of any resident with known or suspected COVID-19. If any residents have confirmed COVID-19 transmission which occurs in the facility, healthcare personnel should wear full PPE [i.e., facemask, eye protection, gloves, and gown] for the care of all residents irrespective of COVID-19 diagnosis or symptoms.” *Id.* With respect to staffing, in order to mitigate risk of transmission, DPH required long-term care facilities to “[c]reate separate staffing teams that are dedicated for residents that are COVID-19 positive,” “[e]xercise consistent assignments of staff to residents regardless of symptoms or COVID-19 status,” and advised that “staff should not work across units or floors.” *Id.* With

regard to screening, “[l]ong-term care facilities should be screening all individuals entering the facility, including staff, for symptoms on a daily basis. In accordance with previously issued guidance, every individual regardless of reason for entering a long-term care facility should be asked about COVID-19 symptoms and must also have their temperature checked.” *Id.* DPH’s guidance further stated that “[r]esidents should be asked about COVID-19 symptoms and must have their temperatures checked a minimum of two times per day.” *Id.* These same requirements were released again in a guidance document updated on or around April 29, 2020.

Exhibit 5.

42. Also, on April 28, 2020, MassHealth issued its Nursing Facility Bulletin 145, entitled “Infection Control Competencies and Expectations for Nursing Facilities.” **Exhibit 6.** This bulletin specifically required implementation of, and adherence to, 28 infection control competencies, including the “core competency” that “[r]esidents who are confirmed by testing to be infected with COVID-19 or who are recovering from COVID-19 have been separated from residents who are not infected and have unknown status (i.e., in dedicated wings/units or in separate rooms).” *Id.* (emphasis added). “All residents who are not suspected to be infected with COVID-19 are in rooms or units that do not include confirmed or suspected cases.” *Id.* (emphasis added). Further, the guidance mandated that “[r]esident cohorting [be] re-evaluated by infection control lead and clinical staff and implemented each day based on results of . . . surveillance testing [], temperature checks, and symptom screening in accordance with the CDC’s recommendations.” *Id.* Other “core” infection control competencies nursing facilities were expected to implement included that “[a]ll health care professionals have been trained to recognize the signs and symptoms of COVID-19 (e.g., fever, cough, sore throat, shortness of breath),” and “[s]taff have been trained on selecting, donning, and doffing appropriate PPE and

demonstrate competency of such skills during resident care.” *Id.* Moreover, the facility was required to “screen[] every individual entering the facility (including staff) for COVID-19 symptoms,” including use of temperature checks. *Id.* The nursing facility was also required to implement a staffing plan to limit transmission, including using “[d]edicated, consistent staffing teams who directly interact with residents that are COVID-19 positive” and “no[t] rotat[ing] staff between floors or wings during the period they are working each day.” *Id.* With respect to monitoring residents, all residents were required to be “screened for symptoms of COVID-19 and have their vital signs monitored, including oxygen saturation and temperature checks, at a minimum of two times per day and documented in the clinical record. Residents with any suspected respiratory or infectious illness are assessed (including documentation of respiratory rate, temperature and oxygen saturation) at least every four hours, during the day and evening shifts, to quickly identify residents who require transfer to a higher level of care.” *Id.*

43. Pursuant to Nursing Facility Bulletin 145, each facility was required to complete, execute, and submit a “Nursing Facility Provider Self-Assessment and Attestation to Infection Control Policies” attesting, under the pains and penalties of perjury, that the facility currently adheres to the 28 infection control competencies listed in the bulletin. *Id.* Notably, on April 30, 2020, Sea View submitted such attestation, signed by Administrator Tryder, attesting that Sea View “currently adheres to the [28] infection control competencies listed below.” **Exhibit 7.**

44. On April 30, 2020, the CDC also issued guidance on “Responding to COVID-19 in Nursing Homes,” which stated, “[f]or residents with new-onset suspected or confirmed COVID-19, ensure resident is isolated and cared for using all recommended COVID-19 PPE; place resident in a single room if possible pending results of SARS-CoV-2 testing.” **Exhibit 8** (emphasis added). This guidance also expressly instructed facilities to “use [] COVID testing to

inform cohort decisions.” *Id.* Specifically, the CDC stated that “the testing of . . . symptomatic residents should be prioritized.” *Id.* (emphasis added). Other relevant guidance included that the facility must “[e]nsure that HCP have been trained on infection prevention measures, including the use of and steps to properly put on and remove recommended personal protective equipment (PPE),” “[a]ssign dedicated HCP to work only on the COVID-19 care unit,” and “[i]ncrease monitoring of ill residents, including assessment of symptoms, vital signs, oxygen saturation via pulse oximetry, and respiratory exam, to at least 3 times daily to identify and quickly manage serious infections.” *Id.*

45. The next month, on May 9, 2020, MassHealth issued its Nursing Facility Bulletin 146, entitled “COVID-19 Baseline Testing Requirements for Nursing Facilities.” **Exhibit 9.** Such bulletin “requir[ed] that nursing facilities complete baseline testing of staff and residents for COVID-19.” Specifically, each facility was required to “test a minimum of 90 percent of their total residents and a minimum of 90 percent of total staff for COVID-19 between April 8, 2020 and May 25, 2020.” *Id.* To demonstrate the completion of testing, the facility was required to submit a signed attestation on or before May 25, 2020 that baseline testing had been completed and reporting the number of residents and staff tested by the facility between April 8, 2020 and May 25, 2020. *Id.* As noted above, the requirements set forth in both MassHealth Nursing Facility Bulletins 145 and 146 were “mandatory” for all nursing facilities participating in MassHealth and were not optional or voluntary. **Exhibit 10** (emphasis in original). Notably, Sea View did not submit the required attestation stating that it completed the baseline testing mandated under Nursing Facility Bulletin 146.

46. In addition, on May 18, 2020, CMS issued guidance on “Nursing Home Reopening Recommendations for State and Local Officials,” which stated that any facility

considering a phased reopening should ensure “any resident . . . who ha[s] signs or symptoms of COVID-19 is tested.” **Exhibit 11.** On May 19, 2020, the CDC issued similar guidance on “Performing Facility-Wide SARS-CoV-2 Testing in Nursing Homes,” wherein it stated that facilities should “[e]nsure results of initial testing inform cohorting approaches in nursing homes.” **Exhibit 12.**

47. Moreover, in response to a May 20, 2020 public media statement from Defendant Comley stating that Sea View would refuse to test all residents and staff for COVID-19, DPH issued a response statement stating that, “Testing is a key strategy for implementing public health and infection control measures to mitigate the spread of COVID-19 in nursing facilities.” **Exhibit 13.**

48. The following month, on June 25, 2020, the CDC published its guidance “Preparing For COVID-19 in Nursing Homes.” **Exhibit 14.** It stated that given the congregate and high-risk nature of the nursing home population, “a strong infection prevention and control (IPC) program is critical to protect both residents and healthcare personnel (HCP).” *Id.* As such, facilities should “[e]ducate and train HCP, including facility-based and consultant personnel . . . who provide care or services in the facility. Including consultants is important, since they commonly provide care in multiple facilities where they can be exposed to and serve as a source of COVID-19.” *Id.* In addition, “[r]esidents with known or suspected COVID-19 should be cared for using all recommended PPE, which includes use of an N95 or higher-level respirator (or facemask if a respirator is not available), eye protection (i.e., goggles or a face shield that covers the front and sides of the face), gloves, and gown.” *Id.* Other essential precautions included, “[s]creen[ing] all HCP at the beginning of their shift for fever and symptoms of COVID-19,” “[c]reat[ing] a [p]lan for testing residents” especially “prioritiz[ing]” suspected

residents exhibiting “symptoms consistent with COVID-19,” “[a]ctively monitor[ing] all residents . . . at least daily for fever ($T \geq 100.0$ F)¹ and symptoms consistent with COVID-19” to inform isolation decisions, and “[i]ncrease monitoring of ill residents, including assessment of symptoms, vital signs, oxygen saturation via pulse oximetry, and respiratory exam, to at least 3 times daily to identify and quickly manage serious infection.” *Id.* Moreover, the CDC recommended that “[r]esidents in the facility who develop symptoms consistent with COVID-19” be “moved to a single room pending results” of COVID-19 testing. *Id.*

49. Despite this knowledge, the Commonwealth alleges that Sea View and Comley knowingly and/or recklessly failed to comply with such expressly promulgated guidance, which violated Sea View’s regulatory mandate to establish and maintain basic infection control and prevention procedures that ensure a safe environment and prevent the development and transmission of communicable diseases and infections for its residents.

IV. SEA VIEW’S COVID-19 POLICIES

50. Sea View’s own policies during the relevant time period, as early as March 29, 2020, also reflected that Defendants knew that basic infection control and prevention measures should be taken to prevent transmission and spread of COVID-19, including isolation and cohorting procedures when there is a suspected or confirmed COVID-19 positive resident. In such case, Sea View’s policy stated that the “[r]esident should be placed in a private room if one is available” and “if not available, the resident is restricted to their room with the door closed.”

Exhibit 15; *see also* **Exhibit 16** (Sea View’s “Coronavirus / COVID-19 Preparedness and Response Plan”). The facility would then “post [an] isolation/precaution sign outside of the resident’s room” and “staff will wear the following” PPE – “gloves, isolation gown, eye

¹ The CDC also noted that for the nursing home population specifically, “more than two temperatures >99.0 F might also be a sign of fever in this population.”

protection, N95 or higher-level respirator.” This policy also stated that if there was one suspected or confirmed positive case in the facility, all staff should “wear all recommended PPE . . . for the care of residents . . . regardless of symptoms” and “the facility will implement a surveillance plan of staff” to include “screen[ing] for fever [], shortness of breath, cough and/or sore throat.” *Id.* Sea View’s policy further stated that the facility should “[b]egin surveillance of residents for a fever.” *Id.* With respect to training, Sea View’s policy stated the staff should be educated “on what type of precautions should be taken and what [PPE] should be worn when providing care.”

51. Further, Sea View’s policy entitled “If a Resident Develops Symptoms,” stated that “[r]esidents should be monitored for signs and symptoms of respiratory infection on at least a daily basis.” **Exhibit 17.** “If a resident displays symptoms of a respiratory illness,” the facility must “[i]solate the resident in a private room with door closed, and limit contact as much as possible.” *Id.* Further, “[t]he resident must remain in isolation until they are either transferred to a higher level of care or confirmed by a medical provider to be negative for COVID-19.” *Id.* Moreover, the frequency of temperature and symptom checks for symptomatic residents were supposed to be increased “to at least once per shift (three times per day).”

52. Similarly, Sea View’s policy entitled “Confirmed COVID-19 – Resident(s)” stated that “[i]f one or more residents in the community are diagnosed with COVID-19,” the facility should “[f]ollow all directions from the health department and the resident’s physician” and “[r]estrict residents (to the extent possible) to a private room except for medically necessary purposes.” **Exhibit 18.** Notably, the policy further states “[i]f a resident requires a higher level of care or you cannot fully implement all recommended precautions, the residents should be

transferred to another facility that is capable of implementation.” *Id.* For “[c]onfirmed COVID-19 [s]taff,” “[t]he employee should not return to work until medically cleared to return.” *Id.*

V. THE LONG-TERM CARE FACILITY REGULATIONS AND INFECTION CONTROL REQUIREMENTS ARE MATERIAL TO MASSHEALTH.

53. MassHealth’s actions demonstrate the materiality of the long-term care facility regulatory requirements and the infection control guidance related to COVID-19. On June 1, 2020, MassHealth issued its “MassHealth Nursing Facility COVID-19 Accountability and Support Frequently Asked Questions (FAQ),” which specifically confirmed that the requirements outlined in its Nursing Facility Bulletin 145 were “mandatory; it is not an optional or voluntary program” and that they “are requirements for all nursing facilities participating in the MassHealth program.” **Exhibit 10** (emphasis in original). It further stated “[t]hese requirements are essential for monitoring infection control policies and staffing to protect against the spread of COVID-19.” *Id.*

54. Moreover, MassHealth has initiated termination proceedings against providers that have failed to comply with long-term care facility regulations and infection control requirements. For example, on August 3, 2020, MassHealth issued notices of termination to three long-term care facilities: Town and Country Health Care Center, Hermitage Healthcare, and Wareham Healthcare. In describing the grounds for termination, MassHealth identified these facilities’ failure to meet the “requirements for infection control necessary to prevent the spread of [COVID-19] as such requirements were established through Administrative Bulletin 20-53 and accompanying MassHealth Nursing Facility Bulletin 145.” As further grounds, MassHealth identified the facilities’ low staffing levels, as well as previously cited regulatory violations, both related to infection control and otherwise, from recent CMS and DPH surveys.

STATEMENT OF FACTS

VI. MASSHEALTH AND DPH AUDIT FINDINGS AND RAPID RESPONSE TEAM IDENTIFICATION OF INFECTION CONTROL ISSUES

55. During the relevant time period, MassHealth and DPH conducted multiple infection control audits and surveys at Sea View that revealed “serious concerns” with numerous infection control procedures.

56. In addition, the Rapid Response Team (“RRT”), a DPH-contracted clinical team deployed to Sea View to provide urgent, short-term assistance with crisis management and shortfalls in staffing, training, and implementation of infection control protocols, identified critical deficiencies in Sea View’s basic infection control and prevention practices.

57. Specifically, a May 12, 2020 MassHealth infection control audit determined Sea View to be “not in adherence” with Nursing Facility Bulletin 145, because it failed a core competency by failing to train staff on “selecting, donning and doffing appropriate PPE and demonstrate competency during resident care,” among other issues. When MassHealth auditors attempted to conduct a follow-up audit in the following weeks, Sea View staff refused them entry.

58. In or around May 20, 2020, shortly after MassHealth issued its guidance and requirements regarding surveillance and baseline testing of all residents in late April and early May 2020 (see **Exhibits 6 and 9**), Comley made a public media statement that he refused to test any residents at Sea View. **Exhibit 13**. The Director of Nursing (“DON”), Maureen Curley (“Curley”), stated to AGO investigators that she advised Comley that his refusal to allow testing would “come back to bite them” but that Comley responded “fuck them, let them come after me.” Further, Sea View’s Administrator Tryder stated that he disagreed with Comley’s decision at the time and wanted “to do the right thing” and get resident testing done by the National

Guard. Later on, when Tryder allowed the National Guard in the facility to conduct staff testing, he was put on administrative leave by Comley.

59. Subsequently, on June 7, 2020 and June 10, 2020, a DPH infection control specialist conducted an infection control audit of Sea View and found critical infection control issues. Among other issues, the DPH specialist found improper cohorting of residents, (i.e., a positive resident was kept in the same room as an untested resident with unknown COVID-19 status) and that the facility used a hanging, unsealed curtain to divide the sections of the first floor that contained symptomatic/positive COVID-19 residents from those with negative or not suspected status. In addition, the DPH specialist noted improper use of PPE (i.e., all staff were not wearing masks, nor were in full PPE as required when a positive COVID-19 case was in the facility); that there was no evidence of training on proper use of PPE or other COVID-19 infection control competencies since March 2020; that the necessary signage was not in place for positive residents' rooms; that the facility was not screening staff upon entry as there was a broken thermometer at the facility entrance; that the infection control lead was not maintaining a daily line list and the facility had incomplete baseline and surveillance COVID-19 testing of residents as recommended; and that the facility was utilizing the same nursing staff to care for residents who were positive for COVID-19 and negative for COVID-19 rather than having designated staff.

60. The following day, on June 8, 2020, DPH sent Sea View a letter expressing "serious concern about the infection control procedures in place at [Sea View], given the cases of [COVID-19] reported among staff and residents [(i.e., "two staff members and three resident cases of COVID-19 in the past two weeks")].” The June 8, 2020 letter noted that while “there are numerous infection control deficiencies which must be addressed,” “most critically” Sea

View needed to implement and complete the six (6) following actions by the next day, June 9, 2020, at 5pm:

(1) residents must be cohorted in distinct separate areas based upon their COVID-19 status, including (a) placing positive residents in dedicated COVID-positive units or in a room alone, (b) residents not suspected to have COVID are not placed in rooms with confirmed or suspected residents, and (c) symptomatic residents are tested and quarantined from other residents, and once test results are received, appropriately cohorted;

(2) the facility's designated infection control lead must maintain a daily line list of COVID-19 testing & results;

(3) necessary PPE must be immediately available outside rooms in units with separate cohorted spaces for positive and negative residents, and staff must wear masks at all times and appropriately don and doff PPE prior to engaging in resident care;

(4) necessary signage must be posted outside resident's rooms indicating appropriate infection control and prevention precautions and required PPE per DPH guidance;

(5) closing of all congregate areas and end communal dining; and

(6) written communication must be sent to all residents and families to inform them of COVID-19 in the facility.

61. The letter then stated "after these critical issues are addressed, Sea View will need to continue to resolve other outstanding infection control concerns in a timely manner." Notably, a member of DPH's infection control specialist team stated that Sea View's audit was the "worst" audit findings they had seen. The DPH infection control specialist who conducted the June 7 and 10, 2020 audit opined that Sea View staff was "totally unprepared" for when COVID-19 entered the facility and the staff appeared wholly uninformed, uneducated, and untrained on the DPH and CDC guidance that had issued months before in February, April, and May 2020, and such unpreparedness made it "inevitable" that COVID-19 would spread through the facility.

62. Moreover, clinical members of the RRT, which was deployed to the facility for 19 days, from June 7, 2020 to June 26, 2020, stated that Sea View was the “worst” facility they had been in with respect to infection control, and that the RRT remained at Sea View to assist with continuing issues longer than any other facility at the time. The lead Charge Nurse of the RRT further stated that, throughout the time the RRT was at the facility, facility staff, including the DON, Curley, were difficult to reach, and appeared disconnected and lacking a sense of urgency, engagement, or understanding of the importance of implementing essential infection control procedures, including the need to complete baseline testing of all residents, which was not completed until June 12, 2020. Another member of the RRT stated that, upon arrival, facility staff were not wearing or using PPE appropriately, she never witnessed any PPE coaching from facility leadership, and the DON was never present. Further, according to another member of the RRT, during this time period staff were not being properly screened or monitored prior to entering the facility and engaging in resident care. For example, one Certified Nursing Assistant (“CNA”)’s test result returned positive one evening, but she was not notified by facility management, and was allowed to report for work the next day despite her COVID-19 positive result.

63. Moreover, during the Commonwealth’s investigation of the Sea View facility, former Sea View employees, including health care personnel, stated they were not given training on infection control protocols, there was no signage regarding COVID-19 policies or procedures, and they were not told which residents were positive for COVID-19 until the RRT came to the facility. Further, a former CNA stated that in late May 2020, she worked a double shift where for her first shift, she worked on the first floor where the COVID-19 symptomatic residents were located; and for her second shift, she was assigned to the second floor to care for the negative,

asymptomatic residents. The CNA stated that she did not think this was a good decision, did not feel comfortable with the potential risk for cross-contamination, and that the DON, Curley, was aware, but did nothing to change it.

64. On June 18, 2020, DPH conducted a follow-up audit of Sea View based on a further increase in positive COVID-19 cases being reported. The June 18, 2020 audit identified several continuing infection control failures. Namely, the facility failed to screen staff upon entering the facility each morning, allowing staff to self-screen if no individual was posted at the entry to conduct the screening. Also, the facility failed to establish and implement a surveillance plan for identifying, tracking, monitoring, and/or reporting residents' COVID-19 symptoms. In particular, after a resident was recorded as having a fever, there was no record that the resident's temperature was assessed or monitored whatsoever, let alone the required frequency of at least once per shift (i.e. three times a day), for a period of 11 days. Moreover, when interviewed by the DPH surveyor, the DON, Curley, admitted that the facility was not assessing and monitoring all resident's vital signs consistently per CDC and DPH guidance of three times per day. Notably, just a few days after the June 18, 2020 audit findings flagged staff screening as an issue, facility staff continued to improperly self-screen upon entering the facility for five days.

65. As a result of DPH's June 18, 2020 on-site investigation, DPH found Sea View not in compliance with infection control regulations, 42 C.F.R. 483.80 *et seq.*, and issued Sea View a Statement of Deficiencies on June 25, 2020 with a requirement that it submit an acceptable Plan of Correction for each deficiency cited within ten (10) calendar days. The corrective action Sea View was directed to take included:

- (a) Develop and implement policies and procedures related to appropriate screening, restriction and education of all staff for signs/symptoms of illness and exposure to COVID-19 upon entrance to the Facility;

- (b) Develop and implement policies and procedures related to the following:
 - a. Surveillance system for identifying, screening, tracking, monitoring for signs/symptoms of COVID-19;
 - b. Standard and transmission-based precautions including but not limited to appropriate use of PPE and hand hygiene;
 - c. Isolation/cohorting residents with known or suspected COVID-19 or other actions based on national, state, or local public health authorities;
 - d. Staffing strategies during an emergency; and
- (c) Ensure all staff receive training on facility-wide COVID-19 Infection Prevention and Control Program.

66. Sea View did not submit an acceptable Plan of Correction in response to DPH's June 25, 2020 statement of deficiencies until almost a month later, on July 22, 2020. Subsequently, on July 24, 2020, DPH surveyors conducted a follow-up survey at Sea View and found the facility in compliance, effective July 27, 2020.

67. From June 1, 2020 to June 30, 2020, one of the time periods when Sea View was clearly noncompliant with federal, state, DPH, and MassHealth regulations, Sea View continued to submit claims for payment to MassHealth for services that purported to comply with all regulatory requirements. For example, Sea View submitted four (4) claims for services provided to MassHealth members D.D., M.F., M.G., and S.H. during June 1, 2020 to June 30, 2020, and was paid \$24,654.98 by MassHealth for such services.

68. By failing to implement facility-wide infection control and prevention procedures, such as: (a) providing staff with COVID-19 competency training, (b) using personal protective equipment ("PPE") properly, (c) screening staff at entry prior to engaging in resident care, (d) completing baseline and surveillance COVID-19 testing of residents, (e) creating separate staffing teams dedicated to COVID-19 positive residents and/or consistent assignments of staff to residents, (f) assessing and monitoring residents' vital signs and temperature the required frequency per CDC, DPH and MassHealth guidance, and (g) properly cohorting residents,

Defendants Sea View and Comley knowingly and/or recklessly failed to comply with numerous DPH, CDC, and MassHealth guidance regarding COVID-19 infection control protocols necessary to prevent and limit COVID-19 transmission in long-term care facilities.

69. Failure to comply with such guidance violated Sea View's regulatory mandate under 42 C.F.R. § 483.80 to "establish and maintain an infection prevention and control program designed to . . . prevent the development and transmission of communicable diseases and infection," including using proper isolation procedures and a system for surveilling, identifying and investigating communicable diseases for all residents. Such conduct also violated DPH's regulations and standards for long-term care facilities providing that "[a]ll facilities shall provide appropriate, adequate and sufficient nursing services to meet the needs of residents and to ensure preventive measures, . . . activities and related services are carried out," *see* 105 C.M.R. § 150.007(A), as well as the federal regulations stating that a "facility must ensure residents receive treatment and care in accordance with professional standards of practice," 42 C.F.R. § 483.25, and that "[a] facility must ensure that licensed nurses have the specific competencies and skill sets necessary to care for residents' needs." 42 C.F.R. § 483.35(A)(3).

70. Defendants' above-described conduct and/or failures to act were also in direct violation of MassHealth's regulations which mandate compliance with and implementation of the 28 infection control requirements outlined in Nursing Facility Bulletin 145, with particular respect to (a) screening staff members upon entry using temperature checks; (b) separating, isolating and/or cohorting suspected, symptomatic or confirmed COVID-19 positive residents from those with unknown or negative COVID-19 status; (c) re-evaluating resident cohorting daily based on surveillance testing, temperature checks, and symptom screening; (d) using consistent dedicated staffing teams assigned to care for COVID-19 positive residents and not

rotating staff between floors or units during each work day; (f) training staff on selecting, donning and doffing PPE appropriately and demonstrating competency of such skills during resident care; and (g) screening and monitoring all residents' vital signs for COVID-19 symptoms twice a day, and for suspected residents, every four hours. **Exhibit 6.** Defendants' noncompliance with MassHealth regulations also resulted in the submission of false claims to MassHealth for services provided that violated material conditions of payment.

71. Defendants' failure to comply with DPH and MassHealth regulations and provider bulletins regarding infection control and prevention also violated the DPH and MassHealth regulations requiring that Sea View operate as a "suitable" licensee under DPH licensing regulations. 130 C.M.R. § 456.404; 105 C.M.R. § 153.012(A)(7).

VII. SEA VIEW FAILED TO COHORT AND/OR ISOLATE KNOWN SYMPTOMATIC AND COVID-19 POSITIVE RESIDENTS 1 AND 2 AND FAILED TO TIMELY TEST RESIDENT 1 AFTER KNOWING RESIDENT 1 WAS COVID-19 SYMPTOMATIC

72. With respect to Sea View's failure to cohort and test residents, most significantly, Sea View failed to comply with proper cohorting and testing procedures for the three residents of Room 112 once Sea View, Comley, and its employees knew that two of the residents were suspected or known to be symptomatic and/or COVID-19 positive.

73. According to Sea View's daily bed census, the facility had at least three (3) available rooms with beds during the relevant time period to allow Defendants to implement, comply with, and adhere to the proper, recommended isolation and cohorting procedures for Residents 1, 2, and 3.² Moreover, during the Commonwealth's investigation of the Sea View facility, Sea View's former DON, Curley, stated there was no shortage of tests during the relevant time period to conduct the necessary testing.

² Resident names have been replaced with numbers to protect patient privacy.

A. Failure to Cohort Residents 1, 2, and 3

74. According to Sea View's census, Residents 1, 2, and 3 were three residents living together in Room 112 on the first floor of the facility starting from at least May 1, 2020. On May 28, 2020, Sea View staff took Resident 1's temperature and recorded an elevated temperature of 100.5 degrees – a sign and symptom of COVID-19.³ The next day, Resident 1 developed a cough – another COVID-19 symptom. Resident 1 continued to have elevated temperatures over the following six (6) days through June 3, 2020.

75. During the seven days, May 28, 2020 to June 3, 2020, while Resident 1 was COVID-19 symptomatic, Resident 1 was not isolated or cohorted and instead kept in the same room as his roommates Resident 2 and Resident 3. Before and throughout that time period, neither Resident 2 nor Resident 3 had or were showing COVID-19 symptoms. Moreover, before and throughout that time period, neither Resident 2 nor Resident 3 had tested positive for COVID-19, and therefore had an unknown or negative COVID-19 status.

76. On June 4, 2020, Sea View received notice that Resident 1's COVID-19 test lab results returned positive for COVID-19.

77. That same day, June 4, 2020, Resident 1 was transferred to Anna Jacques Hospital and admitted for "Fever, Pneumonia, and COVID-19." After Resident 1's transfer to the hospital, his roommates Resident 2 and Resident 3 remained residing together in Room 112.

78. However, also on June 4, 2020, Sea View also received notice that Resident 2's COVID-19 test lab results also returned positive for COVID-19. At the time, Resident 3 still had

³ See <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> and <https://www.cdc.gov/quarantine/air/reporting-deaths-illness/definitions-symptoms-reportable-illnesses.html> (defining a fever as a temperature of 100.4 degrees or more, or feeling "warm to the touch"); <https://yalehealth.yale.edu/covid-19-symptoms> (noting a fever greater than 99.9 degrees may be a symptom of COVID-19). Moreover, Sea View's own "COVID-19 Policy/Procedure" defined a fever as a temperature "greater than 100.3F."

not exhibited any COVID-19 signs and symptoms, had not yet been tested for COVID-19, and was not known to be positive for COVID-19.

79. Despite this, Resident 2 was still kept in the same room as Resident 3 for an additional five (5) days from June 4, 2020 through June 8, 2020, before Resident 3 was moved to another room in the facility on June 9, 2020.

80. On June 12, 2020, Resident 2 was transferred to Beth Israel Lahey Health Hospital in Beverly, MA, where he was treated for “acute hypoxemic respiratory failure.”

81. On June 30, 2020, Resident 2 died while in the hospital of respiratory failure as a consequence of a COVID-19 infection, which is noted in both his medical records and death certificate.

82. Resident 3 ultimately also passed away on June 23, 2020 from atherosclerotic heart disease as noted on his death certificate.

83. During this time, Sea View was submitting claims for payment to MassHealth for the nursing services provided to Resident 3. Specifically, Sea View submitted two claims to MassHealth for payment for the 54 days of service provided to Resident 3 in the months of May and June 2020, and was paid \$6,835.21.

84. Notably, during the Commonwealth’s investigation of the Sea View facility, investigators spoke with Sea View’s former DON, Curley, regarding the residents of Room 112. Curley informed investigators that as the DON, she was the Sea View employee responsible for implementing testing, cohorting, and infection control protocols.

85. Curley confirmed that, despite being notified and aware that Resident 1 had developed an elevated temperature, Sea View did not cohort or isolate Resident 1 from his roommates once Resident 1 became COVID-19 symptomatic. She further stated to investigators

that she believed the facility should have separated the residents in Room 112 per DPH, CDC, and MassHealth guidance. Curley acknowledged that the facility had “dropped the ball” in failing to cohort the residents in Room 112.

86. Curley further stated that she had made Comley aware that Resident 1 and his roommates were not cohorted and that the facility should keep eyes on Room 112 as a “hot zone.” In response, Comley did not give any direction to cohort the residents.

87. Curley also stated that both she and Comley were aware of DPH and CDC guidance to isolate symptomatic and/or known COVID-19 positive residents from others with unknown or negative status.

88. Defendants’ failure to isolate or cohort Resident 1 from his roommate Resident 2 for seven (7) days once Resident 1 became COVID-19 symptomatic substantially increased the likelihood of harm to Resident 2’s health and safety and resulted in Resident 2’s death due to COVID-19 infection.

89. Defendants’ failure to isolate or cohort Resident 1 from his roommate Resident 3 for seven (7) days once Resident 1 became COVID-19 symptomatic substantially increased the likelihood of harm to Resident 3’s health and safety.

90. Defendants’ failure to isolate or cohort Resident 2 from his roommate Resident 3 for five (5) days once Resident 2 was known to be positive for COVID-19 substantially increased the likelihood of harm to Resident 3’s health and safety.

91. By failing to properly cohort or isolate roommates Residents 1, 2, and 3, Defendants Sea View and Comley failed to comply with DPH, CDC, and MassHealth guidance governing cohorting and isolation procedures to prevent COVID-19 infection and transmission in long-term care facilities. Failure to comply with such guidance violated Sea View’s

regulatory mandate under 42 C.F.R. § 483.80 to “establish and maintain an infection prevention and control program designed to . . . prevent the development and transmission of communicable diseases and infection,” including using proper isolation procedures. Such conduct also violated DPH’s regulations and standards for long-term care facilities providing that “[a]ll facilities shall provide appropriate, adequate and sufficient nursing services to meet the needs of residents and to ensure preventive measures, . . . activities and related services are carried out,” *see* 105 C.M.R. § 150.007(A), as well as the federal regulations stating that a “facility must ensure residents receive treatment and care in accordance with professional standards of practice.” 42 C.F.R. § 483.25.

92. Defendants’ above-described conduct and/or failure to act also constituted wanton or reckless neglect of Residents 2 and Resident 3 by failing to provide appropriate care with respect to preventing and controlling COVID-19 virus transmission and spread, resulting in Resident 2’s death and increasing the risk of harm to Resident 3.

93. Defendants’ above-described conduct and/or failure to act was also in direct violation of MassHealth’s regulations which mandate compliance with and implementation of the requirements outlined in Nursing Facility Bulletin 145 (**Exhibit 6**) with respect to separating, isolating and/or cohorting suspected, symptomatic or confirmed COVID-19 positive residents from those with unknown or negative COVID-19 status. Such noncompliance also resulted in the submission of false claims to MassHealth for services provided that violated material conditions of payment.

94. Defendants’ failure to comply with DPH and MassHealth regulations and provider bulletins regarding infection control and prevention also violated the DPH and

MassHealth regulations requiring that Sea View operate as a “suitable” licensee under DPH licensing regulations. 130 C.M.R. § 456.404; 105 C.M.R. § 153.012(A)(7).

B. Failure to Timely Test Resident 1 Upon Resident 1 Exhibiting COVID-19 Signs and Symptoms

95. Sea View also failed to timely comply with recommended and mandated COVID-19 testing guidance and procedures for symptomatic residents after Sea View knew that Resident 1 was exhibiting signs and symptoms of COVID-19, which substantially increased the likelihood of harm to Resident 1 and his roommates’ Resident 2’s and Resident 3’s health and safety.

96. Namely, despite Sea View staff taking Resident 1’s temperature on May 28, 2020 and recording an elevated temperature of 100.5 (a sign and symptom of COVID-19), Defendants did not administer a COVID-19 test to Resident 1 until June 1, 2020, four (4) days after Resident 1’s first onset of COVID-19 symptoms. Resident 1’s COVID-19 test lab result returned positive several days later on June 4, 2020.

97. During the time period from when Resident 1 first became symptomatic until he was finally tested four days later, he remained in the same room as his roommates Resident 2 and Resident 3 (neither of whom were symptomatic or had tested positive at the time), thereby substantially increasing the risk of exposing Resident 2 and Resident 3 to COVID-19 infection.

98. Sea View had obtained authorization to test Resident 1 before his first onset of symptoms. Resident 1’s written consent form to be tested for COVID-19 was signed on May 7, 2020 by his health care proxy, more than three weeks before his first onset of symptoms. The consent form also contains a handwritten note indicating that Sea View obtained a second verbal confirmation on May 27, 2020 allowing Resident 1 to be tested.

99. Moreover, Sea View’s former DON, Curley, advised investigators that the facility had no lack of tests at the time to perform any necessary COVID-19 testing.

100. During this time, Sea View was submitting claims for payment to MassHealth for the nursing services provided to Resident 1. Specifically, Sea View submitted two claims to MassHealth for payment for the 41 days of services provided for Resident 1 in the months of May and June 2020 and was paid \$5,685.82 for such claims.

101. Sea View's failure to timely test Resident 1 upon Resident 1 exhibiting COVID-19 signs and symptoms showed a reckless disregard for complying with the CDC's April 30, 2020 guidance regarding "use of COVID[-19] testing to inform cohort decisions," which instructed facilities to "prioritize" the testing of symptomatic residents. As such, Sea View's failure to timely test Resident 1 for four (4) days prevented Resident 1's COVID-19 positive status from being timely known, and prevented Sea View from utilizing this information to make timely and appropriate cohorting decisions regarding Resident 1 and his roommates in Room 112 to reduce the risk of COVID-19 transmission and exposure. Such failure substantially increased the risk of harm to Resident 1 and his roommates' health and safety.

102. Defendants' failure to timely test Resident 1 also violated their infection control mandate under 42 C.F.R. § 483.80 to implement a surveillance protocol that prevents and controls the spread of communicable diseases to residents and violated their mandate to provide care in accordance with professional standards of practice pursuant to 42 C.F.R. § 483.25.

103. Defendants' failure to timely test Resident 1 was also in direct violation of MassHealth's regulations which mandate compliance with the requirements outlined in Nursing Facility Bulletin 145, which specifically required that "[r]esident cohorting [be] re-evaluated by infection control lead and clinical staff and implemented each day based on results of . . . surveillance testing [], temperature checks, and symptom screening in accordance with the CDC's recommendations." **Exhibit 6.**

104. Defendants' failure to timely test Resident 1 was also in direct violation of MassHealth's regulations which mandate compliance with the requirements outlined in Nursing Facility Bulletin 146, which made "mandatory" baseline testing 90% of all residents and staff for COVID-19 by or before May 25, 2020 to help against its spread and transmission. **Exhibits 9 and 10**. Such noncompliance also resulted in the submission of false claims to MassHealth for services provided that violated material conditions of payment.

105. Defendants' failure to comply with DPH and MassHealth regulations and provider bulletins regarding infection control and prevention also violated the DPH and MassHealth regulations requiring that Sea View operate as a "suitable" licensee under DPH licensing regulations. 130 C.M.R. § 456.404; 105 C.M.R. § 153.012(A)(7).

CAUSES OF ACTION

COUNT ONE

(False Claims in Violation of G.L. c. 12, § 5B(a)(1))

106. The Commonwealth incorporates by reference the allegations contained in paragraphs 1 – 105 of this Complaint as if fully alleged herein.

107. During the relevant time period, Defendant Sea View was under contract with MassHealth as a nursing facility provider, and Sea View's contract with MassHealth and MassHealth regulations required Sea View to comply with all MassHealth rules, regulations, policies, and procedures governing its participation in MassHealth.

108. From at least February 27, 2020 through July 24, 2020, Defendants failed to comply with applicable MassHealth rules, regulations, policies, procedures and mandates for nursing facility providers requiring that Defendants: (1) operate as a "suitable" DPH-licensed facility; (2) implement and adhere to the 28 infection control competencies and expectations outlined in MassHealth Nursing Facility Bulletin 145; and (3) comply with the surveillance and baseline

testing requirements outlined in MassHealth Nursing Facility Bulletin 146.

109. Namely, by knowingly failing to implement facility-wide infection control and prevention procedures such as: (a) providing staff with COVID-19 competency training, (b) using personal protective equipment (“PPE”) properly, (c) properly screening staff at entry prior to engaging in resident care, (d) completing baseline and surveillance COVID-19 testing of residents, (e) creating separate staffing teams dedicated to COVID-19 positive residents and/or consistent assignments of staff to residents, (f) assessing and monitoring residents’ vital signs and temperatures the required frequency per DPH and CDC guidance, and (g) properly cohorting symptomatic, positive, and not suspected residents, Defendants’ services with respect to infection control care and prevention did not comply with MassHealth’s regulations that required implementation of the infection control precautions and measures outlined in Nursing Facility Bulletins 145 and 146.

110. Further, by knowingly failing to cohort or isolate Resident 1 from his roommates Resident 2 and Resident 3 for seven (7) days once Resident 1 became COVID-19 symptomatic, and by knowingly failing to properly cohort or isolate Resident 2 from his roommate Resident 3 for five (5) days once Resident 2 was known to be positive for COVID-19, Defendants directly violated MassHealth’s all provider regulations, 130 C.M.R. §§ 450.102 and 450.103(B), which mandate compliance with and implementation of the requirements outlined in Nursing Facility Bulletin 145, which required separating, isolating, and/or cohorting suspected, symptomatic, or confirmed COVID-19 positive residents from those with unknown or negative COVID-19 status.

111. In addition, by knowingly failing to timely administer a COVID-19 test to Resident 1 for four (4) days after Defendants knew that Resident 1 was exhibiting signs and symptoms of COVID-19, Defendants directly violated MassHealth’s all provider regulations, 130 C.M.R. §§

450.102 and 450.103(B), which mandate compliance with and implementation of the requirements outlined in Nursing Facility Bulletin 145, which required that “[r]esident cohorting [be] re-evaluated . . . each day based on results of . . . surveillance testing [], temperature checks, and symptom screening in accordance with the CDC’s recommendations.” It also was in direct violation of Nursing Facility Bulletin 146’s “mandatory” baseline testing requirement to test 90% of all residents and staff for COVID-19 by or before May 25, 2020 to help against its spread and transmission.

112. Further, Defendants’ conduct violated MassHealth’s long-term care facility regulations at 130 C.M.R. § 456.404, stating that all MassHealth participating nursing facilities “must [] be licensed by the Massachusetts Department of Public Health to operate such a facility.” To maintain its DPH license, Sea View must comply with all DPH regulations and long-term care facility standards, and maintain its status as a “suitable” licensee. 105 C.M.R. § 153.012. A licensee is “not suitable,” if the “licensee has maintained a substandard level of care, as measured by compliance with applicable licensing regulations in Massachusetts or elsewhere, with applicable federal conditions of participation in Medicare and Medicaid and other pertinent evidence.” 105 C.M.R. § 153.012(A)(7). If a licensee is found “not suitable” to operate a long-term care facility, this constitutes a “full and adequate ground on which to deny, revoke, or refuse to renew a license to operate a long-term care facility.” 105 C.M.R. § 153.014(A).

113. As a result of such noncompliance, from at least February 27, 2020 through July 24, 2020, Defendants, either with actual knowledge or deliberate ignorance of or reckless disregard for the truth, submitted or caused to be submitted false claims for services provided to MassHealth members to the MassHealth program in violation of G.L. c. 12, § 5B(a)(1).

114. These claims were false inasmuch as they were for services not eligible for

reimbursement because Defendants misrepresented compliance with applicable statutes and regulations that are conditions of payment. These misrepresentations were material as that term is defined in the Massachusetts False Claims Act and interpreted by the courts.

115. By virtue of the false or fraudulent claims that Defendants knowingly submitted and caused to be submitted, Plaintiff Commonwealth of Massachusetts has suffered actual damages and is entitled to recover treble damages plus civil monetary penalties.

COUNT TWO
(Violation of G.L. c. 93A, §§ 2(a), 4 for Failure to Implement Facility-Wide Basic Infection Control and Prevention Procedures)

116. The Commonwealth incorporates by reference the allegations contained in paragraphs 1 – 115 of this Complaint as if fully alleged herein.

117. G.L. c. 93A, § 2(a) prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

118. 940 C.M.R. § 4.02 provides that “[i]t shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or an administrator. . . to fail to comply with any existing state or federal statute, rule or regulation which provides protection to or for residents or prospective residents of long-term care facilities.”

119. A corporation can be held vicariously liable under G.L. c. 93A for the conduct of an agent within the scope of employment “if it is of the kind he [or she] is employed to perform; if it occurs substantially within the authorized time and space limits; and if it is motivated, at least in part, by a purpose to serve the employer.” *Sarvis v. Boston Safe Deposit & Trust Co.*, 47 Mass. App. Ct. 86, 96 (1999) (quoting *Wang Labs., Inc. v. Business Incentives, Inc.*, 398 Mass. 854, 859 (1986)).

120. During the relevant time period February 27, 2020 through July 24, 2020,

Defendants knowingly failed to implement facility-wide infection control and prevention procedures such as: (a) providing staff with COVID-19 competency training, (b) using personal protective equipment (“PPE”) properly, (c) properly screening staff at entry prior to engaging in resident care, (d) completing baseline and surveillance COVID-19 testing of residents, (e) creating separate staffing teams dedicated to COVID-19 positive residents and/or consistent assignments of staff to residents, (f) assessing and monitoring residents’ vital signs and temperatures the required frequency of once per shift per DPH and CDC guidance, and (g) properly cohorting symptomatic, positive, and not suspected residents. By such failures, Defendants failed to comply with DPH, CDC, MassHealth and CMS guidance regarding implementation of these infection control and prevention procedures that had been established as essential to prevent and limit the risk of transmission of COVID-19 in long-term care facilities.

121. Failure to comply with such guidance violated Sea View’s regulatory infection control mandate under 42 C.F.R. § 483.80 to implement “[a] system of surveillance designed to identify possible communicable diseases or infections before they can spread to other persons in the facility” (42 C.F.R. § 483.80(a)(2)(i)), as well as “[a] system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents.” 42 C.F.R. § 483.80(a)(1). Such conduct also violated DPH’s regulations and standards for long-term care facilities providing that “[a]ll facilities shall provide appropriate, adequate and sufficient nursing services to meet the needs of residents and to ensure preventive measures, ... activities and related services are carried out.” 105 C.M.R. § 150.007(A). Sea View’s conduct also violated federal regulations requiring that a “facility must ensure residents receive treatment and care in accordance with professional standards of practice,” *see* 42 C.F.R. § 483.25, and that “[a] facility must ensure that licensed nurses have the specific competencies and skill sets necessary to care for

residents' needs." 42 C.F.R. § 483.35(A)(3). Defendants' conduct was also in direct violation of MassHealth's regulations which mandated implementation of the 28 infection control competencies in Nursing Facility Bulletin 145 and compliance with the surveillance and baseline testing requirements outlined in Nursing Facility Bulletin 146.

122. As such, Defendants violated the Consumer Protection Act, G.L. c. 93A, § 2(a), by knowingly failing to implement and/or comply with infection control and prevention regulations that provided protection to or for residents or prospective residents of long-term care facilities and protect and limit transmission and harm to residents' health and safety.

COUNT THREE
(Violations of G.L. c. 93A, §§ 2(a), 4 for Failure to Comply with Infection Control Regulations With Respect to Residents 1, 2, and 3)

123. The Commonwealth incorporates by reference the allegations contained in paragraphs 1 – 122 of this Complaint as if fully alleged herein.

124. G.L. c. 93A, § 2(a) prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

125. 940 C.M.R. § 4.02 provides that "[i]t shall be an unfair or deceptive act or practice, in violation of M.G.L. c. 93A, § 2, for a licensee or an administrator. . . to fail to comply with any existing state or federal statute, rule or regulation which provides protection to or for residents or prospective residents of long-term care facilities."

126. A corporation can be held vicariously liable under G.L. c. 93A for the conduct of an agent within the scope of employment "if it is of the kind he [or she] is employed to perform; if it occurs substantially within the authorized time and space limits; and if it is motivated, at least in part, by a purpose to serve the employer." *Sarvis v. Boston Safe Deposit & Trust Co.*, 47 Mass. App. Ct. 86, 96 (1999) (quoting *Wang Labs., Inc. v. Business Incentives, Inc.*, 398 Mass. 854, 859

(1986)).

127. By knowingly failing to properly cohort or isolate Resident 1 from his roommate Resident 2 for seven (7) days once Resident 1 became COVID-19 symptomatic, Defendants failed to comply with DPH, CDC, and MassHealth guidance governing cohorting and isolation procedures to prevent COVID-19 infection and transmission in long-term care facilities.

128. By knowingly failing to properly cohort or isolate Resident 1 from his roommate Resident 3 for seven (7) days once Resident 1 became COVID-19 symptomatic, Defendants failed to comply with DPH, CDC, and MassHealth guidance governing cohorting and isolation procedures to prevent COVID-19 infection and transmission in long-term care facilities.

129. By knowingly failing to properly cohort or isolate Resident 2 from his roommate Resident 3 for five (5) days once Resident 2 was known to be positive for COVID-19, Defendants failed to comply with DPH, CDC, and MassHealth guidance governing cohorting and isolation procedures to prevent COVID-19 infection and transmission in long-term care facilities.

130. By knowingly failing to timely administer a COVID-19 test to Resident 1 for four (4) days after Sea View knew that Resident 1 was exhibiting signs and symptoms of COVID-19, Defendants failed to comply with DPH, CDC, and CMS guidance regarding “use of COVID[-19] testing to inform cohort decisions” which instructed facilities to “prioritize” the testing of symptomatic residents. Defendants’ failure to timely test Resident 1 was also in direct violation of MassHealth’s express mandate and requirements outlined in Nursing Facility Bulletin 145, which specifically required that “[r]esident cohorting [be] re-evaluated . . . each day based on results of . . . surveillance testing [], temperature checks, and symptom screening in accordance with the CDC’s recommendations.” It also was in direct violation of Nursing Facility Bulletin 146, which made “mandatory” baseline testing 90% of all residents and staff for COVID-19 by or

before May 25, 2020 to help against its spread and transmission.

131. Defendants' failure to timely test Resident 1 for four days prevented Resident 1's COVID-19 positive status from being timely known, and prevented Defendants from utilizing this information to make timely and appropriate cohorting decisions regarding Resident 1 and his roommates in Room 112 to reduce the risk of COVID-19 transmission and exposure.

132. Failure to comply with DPH, CDC, CMS, and MassHealth guidance violated Sea View's regulatory mandate under 42 C.F.R. § 483.80 to "establish and maintain an infection prevention and control program designed to . . . prevent the development and transmission of communicable diseases and infection," including using proper isolation procedures. Such conduct also violated DPH's regulations and standards for long-term care facilities providing that "[a]ll facilities shall provide appropriate, adequate and sufficient nursing services to meet the needs of residents and to ensure preventive measures, . . . activities and related services are carried out," *see* 105 C.M.R. § 150.007(A), as well as the federal regulations stating that a "facility must ensure residents receive treatment and care in accordance with professional standards of practice." 42 C.F.R. § 483.25. Defendants' conduct was also in direct violation of MassHealth's regulations which mandate compliance with and implementation of the requirements outlined in Nursing Facility Bulletin 145 with respect to separating, isolating, and/or cohorting suspected, symptomatic, or confirmed COVID-19 positive residents from those with unknown or negative COVID-19 status; and compliance with the surveillance and baseline testing requirements in Nursing Facility Bulletins 145 and 146.

133. Defendants violated the Consumer Protection Act, G.L. c. 93A, § 2(a), by knowingly failing to implement and/or comply with established COVID-19 infection control and prevention rules, regulations, policies, procedures, recommendations and guidance with respect to

protecting and limiting transmission and harm to residents Resident 2's and Resident 3's health and safety.

COUNT FOUR

(Violations of G.L. c. 111, § 72K for Wanton or Reckless Neglect of Residents 2 and 3)

134. The Commonwealth incorporates by reference the allegations contained in paragraphs 1 – 133 of this Complaint as if fully alleged herein.

135. G.L. c. 111, § 72K imposes liability on any person who “commits abuse, mistreatment, or neglect of a patient or resident,” or any person “who wantonly or recklessly permits or causes another to commit abuse, mistreatment or neglect of a patient or resident.”

136. Defendants' failure to isolate or cohort Resident 1 from his roommate Resident 2 for seven (7) days once Resident 1 became COVID-19 symptomatic constituted neglect of Resident 2 by failing to provide appropriate care with respect to preventing and controlling COVID-19 virus transmission and spread, substantially increased the likelihood of harm to Resident 2's health and safety, and resulted in Resident 2's death due to COVID-19 infection.

137. Defendants' failure to isolate or cohort Resident 1 from his roommate Resident 3 for seven (7) days once Resident 1 became COVID-19 symptomatic constituted neglect of Resident 3 by failing to provide appropriate care with respect to preventing and controlling COVID-19 virus transmission and spread, and substantially increased the likelihood of harm to Resident 3's health and safety.

138. Defendants' failure to isolate or cohort Resident 2 from his roommate Resident 3 for five (5) days once Resident 2 was known to be positive for COVID-19 constituted neglect of Resident 3 by failing to provide appropriate care with respect to preventing and controlling COVID-19 virus transmission and spread, and substantially increased the likelihood of harm to Resident 3's health and safety.

139. Defendants' failures were wanton or reckless because Defendants knew that DPH, CDC, and MassHealth guidance required isolation and cohorting of symptomatic and positive residents and knew that Resident 1 was symptomatic for COVID-19, but still failed to isolate him from Resident 2 and Resident 3. Further, despite knowing Resident 2 was positive for COVID-19, Defendants failed to isolate him from Resident 3. Accordingly, Defendants failed to provide services necessary to avoid harm to Resident 2 and Resident 3 and such acts and omissions were wanton, reckless, grossly negligent and/or were not in good faith, i.e., were not consistent with the guidelines for COVID-19 standards of care issued by DPH.

COUNT FIVE
(Unjust Enrichment by Sea View)

140. Plaintiff Commonwealth of Massachusetts incorporates by reference the allegations contained in paragraphs 1-139 of this Complaint as if fully alleged herein.

141. Each claim for services submitted by Defendant Sea View to MassHealth for payment impliedly represented and certified that it was compliant with the applicable statutes, rules, regulations, policies, and bulletins governing its participation in MassHealth, including the requirements related to COVID-19 infection control and prevention. MassHealth would not have paid for the claims submitted for services rendered to MassHealth members, including the claims for Residents 1, 2, and 3, during the relevant time period had it known Sea View was noncompliant with such requirements. By retaining monies received from its submissions of claims that were reimbursed by MassHealth, Defendant Sea View has retained money that is the property of the Commonwealth of Massachusetts and to which Defendant Sea View is not entitled.

142. Defendants' failure to provide appropriate services with respect to infection control and prevention constituted reckless, grossly negligent conduct that was not in good faith, i.e., was not consistent with the guidelines and regulations for COVID-19 standards of care issued by DPH.

143. It is unfair and inequitable for Defendant Sea View to retain revenue from payments from MassHealth that Defendant Sea View obtained by violating applicable statutes, regulations, and provider contracts. As a consequence of the acts set forth above, Defendant Sea View has been unjustly enriched and is liable to pay such amounts, which are to be determined at trial, to Plaintiff Commonwealth of Massachusetts.

COUNT SIX
(Breach of Contract by Sea View)

144. The Commonwealth incorporates by reference the allegations contained in paragraphs 1 – 143 of this Complaint as if fully alleged herein.

145. Sea View entered into a MassHealth Nursing Facility Provider Contract, executed by Comley and effective during the relevant time period, whereby it agreed “to comply with, and be subject to, federal and state statutes, regulations, and other applicable laws governing participation in medical assistance programs under 42 U.S.C. § 1396 *et seq.* and M.G.L. c. 118E.”

146. Sea View’s Nursing Facility Provider Contract further provides that “[t]he Provider agrees to provide nursing-facility services to [m]embers . . . consistent with generally accepted professional standards and in conformance with Massachusetts Department of Public Health requirements, [MassHealth’s] nursing facility program regulations at 130 CMR 456.000, and other applicable laws, existing now or during the term of this Contract.”

147. “Applicable laws” is defined in the Contract as “all federal and state laws, and the regulations, policies and procedures of [MassHealth], all as existing now or during the term of this Contract.”

148. From at least February 27, 2020 through July 24, 2020, Sea View knowingly breached its Nursing Facility Provider Contract by failing to comply with federal and state statutes, regulations, and other applicable laws governing infection control and prevention procedures in

long-term care facilities. Those knowing failures violated federal long-term care regulations at 42 C.F.R. § 483.25 and 42 C.F.R. § 483.80; DPH regulations at 105 C.M.R. § 150.007(A); MassHealth's all provider regulations, 130 C.M.R. §§ 450.102 and 450.103(B), which mandated compliance with the isolation/cohorting and the surveillance and baseline testing requirements in MassHealth Nursing Facility Bulletins 145 and 146; and MassHealth and DPH regulations, 130 C.M.R. § 456.404 and 105 C.M.R. §§ 153.012, 153.014(A), requiring that Sea View operate as a "suitable" DPH-licensed nursing facility.

149. Each knowing failure to implement appropriate infection control and prevention protocols, including isolating/cohorting residents or testing residents in compliance with DPH, CDC, CMS, and MassHealth guidance, as well as federal and state rules and regulations, constitutes a material breach of Sea View's Nursing Facility Provider Contract.

150. Defendants' failure to provide appropriate services with respect to infection control and prevention constituted reckless, grossly negligent conduct that was not in good faith, i.e., was not consistent with the guidelines and regulations for COVID-19 standards of care issued by DPH.

151. As a result of Sea View's breach of its Nursing Facility Provider Contract, the Commonwealth has been significantly damaged.

JURY DEMAND

The Commonwealth demands trial by jury in this action of all issues so triable.

PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth demands and prays that after trial on the merits, judgment be entered in its favor as follows:

- a. Count One— for the amount of the Commonwealth's damages, trebled as required by law, plus the costs of investigation and litigation, including the costs of experts, and civil penalties as required by G.L. c. 12, § 5B, together with such other relief as may be just and proper;

b. Counts Two and Three –

- i. for an order enjoining and restraining Sea View, Comley, their agents, servants, employees, successors or assigns, and all other persons, directly or indirectly, alone or in active concert or participation with others, through any corporation, partnership, trust, association, franchise, distributorship, or other device from failing to comply with state or federal regulations that provide protection to or for residents of long-term care facilities; and
- ii. for civil penalties and reasonable costs of the investigation and litigation of this matter, including reasonable attorneys' fees pursuant to G.L. c. 93A, § 4, and other and further relief as this Court deems equitable and proper;

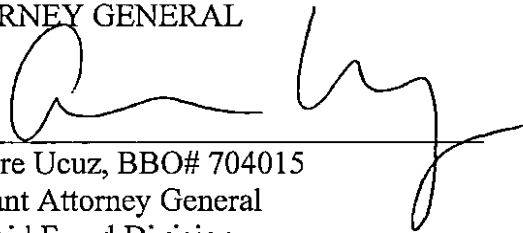
c. Count Four – for applicable civil penalties and other and further relief as this Court deems equitable and proper;

d. Count Five – for the amount of the Commonwealth's damages, as is proved at trial, interest, and costs;

e. Count Six – for the amount of the Commonwealth's damages, as is proved at trial, and interest at the statutory rate of 12% pursuant to G.L. c. 231, § 6C from the date of each breach of contract, together with such other relief as may be just and proper.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY
ATTORNEY GENERAL

By: 
Gregoire Ucuz, BBO# 704015
Assistant Attorney General
Medicaid Fraud Division
One Ashburton Place
Boston, MA 02108
(617) 727-2200
Gregoire.ucuz@mass.gov

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