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Case #24CV440133  
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11 Attorneys for Defendant, SUNCREST HOSPICE SAN JOSE,  
12 LLC, DBA SUNCREST HOSPICE

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

14 **COUNTY OF SANTA CLARA**

15 ADAM PLARES, SR., Individually and as  
16 Successor-in-Interest to the Estate of Vera  
17 Plares,

18 Plaintiff,

19 vs.

20 COVENANT CARE CALIFORNIA, LLC  
21 DBA MISSION SKILLED NURSING &  
22 SUB-ACUTE CENTER, COVENANT  
23 CARE MISSION, INC., SUNCREST  
24 HOSPICE SAN JOSE LLC, DBA  
25 SUNCREST HOSPICE, and DOES 1  
26 through 60, inclusive,

27 Defendants.

CASE NO. 24CV440133

**DEFENDANT SUNCREST HOSPICE SAN  
JOSE, LLC, DBA SUNCREST HOSPICE  
ANSWER TO COMPLAINT**

Dept.: D-16  
Judge: Hon. Amber Rosen

Action Filed: May 29, 2024  
Trial Date: Not Set

28 COME NOW Defendant, SUNCREST HOSPICE SAN JOSE, LLC, DBA SUNCREST  
HOSPICE (“Defendant”), in answer to Plaintiff’s, ADAM PLARES, SR., Individually and as  
Successor-in-Interest to the Estate of Vera Plares (“Plaintiff”) Complaint on file herein admit, deny,  
and allege as follows:

**GENERAL DENIAL**

Pursuant to the provisions of Section 431.30(d) of the California Code of Civil Procedure,  
these answering Defendants generally deny each, every and all of the allegations contained in  
Plaintiff’s unverified Complaint, each cause of action therein and the whole thereof. Further

1 answering said Complaint, and each cause of action therein, these answering Defendant denies that  
2 Plaintiff was damaged or injured in the sums alleged, or in any other sums, or at all, by reason of  
3 any act or omission to act on the part of the answering Defendant, or its agents, servants or  
4 employees.

5 **AFFIRMATIVE DEFENSES**

6 In further answer to Plaintiff's Complaint, and as separate and distinct affirmative defenses,  
7 the answering Defendant alleges as follows:

8 **FIRST AFFIRMATIVE DEFENSE**

9 **(Failure to State Claim)**

10 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
11 purported cause of action alleged therein, Defendant asserts that Plaintiff fails to state facts  
12 sufficient to constitute a cause of action, including but not limited to, Elder Abuse against  
13 Defendant. Defendant reserves the right, and Plaintiff is hereby put on notice, to ask the Court to  
14 bifurcate the trial of the failure to state a claim or otherwise seek a ruling by way of a pretrial  
15 dispositive motion.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Lack of Standing)**

18 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
19 purported cause of action alleged therein, Defendant asserts that Plaintiff's lack standing to sue  
20 Defendant for Plaintiff's Complaint, and each and every purported cause of action alleged therein.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Statute of Limitations)**

23 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
24 purported cause of action alleged therein, Defendant asserts that Plaintiff is barred by the applicable  
25 statute(s) of limitations set forth in the statutes of the State of California, including without  
26 limitation, California Government Code sections 12960 and 12965(b) and California Code of Civil  
27 Procedure sections 335.1, 338, 340, and 343.

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**FOURTH AFFIRMATIVE DEFENSE**

**(Laches)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff is barred by laches in that Plaintiff unreasonably delayed in bringing these claims, and said delays have prejudiced Defendant.

**FIFTH AFFIRMATIVE DEFENSE**

**(Waiver)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff has voluntarily and knowingly waived the claims alleged in Plaintiff’s Complaint, and have waived any right or rights to recover any damages or to obtain any relief herein from Defendant.

**SIXTH AFFIRMATIVE DEFENSE**

**(Consent)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff consented to and authorized the acts and conduct of Defendant upon which Plaintiff’s Complaint is based and therefore Plaintiff’s claims are barred.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Estoppel, Equitable Estoppel and Judicial Estoppel)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff is estopped generally, equitably, and/or judicially from asserting the claims set forth in Plaintiff’s Complaint, and that Plaintiff has engaged in conduct and activities or omissions by reason of which Plaintiff is estopped from asserting her claims for damages or any other relief as set forth within the Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that by virtue of unlawful, immoral,

1 careless, negligent and other wrongful conduct, Plaintiff should be barred from recovering against  
2 Defendant by the equitable doctrine of unclean hands.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Excuse or Justification by Failure to Perform)**

5 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
6 purported cause of action alleged therein, Defendant asserts that Plaintiff is not entitled to the relief  
7 sought because any alleged failure to perform on the part of Defendant is excused and/or justified  
8 by Plaintiff's own failure to perform and by conduct contrary to the expressed terms and implied  
9 spirit of Defendant's policies and procedures and/or Defendant's lawful directives to Plaintiff, and  
10 by Plaintiff's own negligence and improper conduct.

11 **TENTH AFFIRMATIVE DEFENSE**

12 **(Superseding/Intervening Cause)**

13 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
14 purported cause of action alleged therein, Defendant asserts that any and all damages allegedly  
15 sustained by Plaintiff is proximately caused and contributed to, in whole or in part, by the  
16 unforeseeable superseding and/or intervening negligence, carelessness, imprudence, lack of due  
17 diligence, inexcusable neglect or mistake or other improper conduct of other parties, persons and  
18 entities, and therefore, Plaintiff is not entitled to recover anything from Defendant, but rather, said  
19 recovery must only be against other such parties or non-parties. In the alternative, if Plaintiff is  
20 entitled to recover anything from Defendant, such recovery must be diminished to the extent that  
21 the damages alleged in this action are attributable to the unforeseeable superseding and/or  
22 intervening negligence, culpable conduct or fault of others.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 **(Failure to Exercise Ordinary Care)**

25 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
26 purported cause of action alleged therein, Defendant asserts that Plaintiff failed to exercise ordinary  
27 care on their own behalf, which negligence and carelessness was a substantial factor of some  
28 portion, up to and including the whole thereof, of the injuries and damages complained of in this

1 action. Therefore, Plaintiff's recovery against Defendant should be barred or reduced according to  
2 the principles of comparative negligence.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **(Unreasonable Acts of Plaintiff)**

5 Without in any way admitting the allegations in Plaintiff's Complaint, Defendant asserts  
6 that Plaintiff was unreasonable in and about the matters alleged in the Complaint in that she did not  
7 take reasonable precaution to avoid or reduce any actual or potential injury.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 **(Failure to Follow Advice of Healthcare Provider)**

10 Without in any way admitting the allegations in Plaintiff's Complaint, Defendant asserts  
11 that the injury, damage or loss allegedly suffered by Plaintiff herein was legally caused by the  
12 negligent or willful failure of the Plaintiff to follow the advice and instructions of Plaintiff  
13 Decedent, VERA PLARES', attending health care providers and in otherwise failing to exercise  
14 ordinary care on their own behalf.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

16 **(Appropriate Treatment)**

17 Without in any way admitting the allegations in Plaintiff's Complaint Defendant asserts the  
18 services rendered to Plaintiff by Defendant were proper, appropriate and reasonable.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 **(Conduct Assumed Risk)**

21 Without in any way admitting the allegations in Plaintiff's Complaint, Defendant asserts  
22 that prior to the event in which Plaintiff was allegedly injured as a result of Defendant's alleged  
23 negligence, Plaintiff, by her conduct, impliedly assumed the risk of a known and appreciated  
24 danger, and thus Plaintiff may not recover damages from Defendant for that injury.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 **(Unavoidable Condition)**

27 Without in any way admitting the allegations in Plaintiff's Complaint, Defendant asserts  
28 the damages sustained by Plaintiff was the result of an unavoidable condition, insofar as Defendant

1 is concerned, and occurred without any negligence, want of care, fault, or other breach of duty to  
2 Plaintiff on the part of Defendant.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 **(Lack of Causation)**

5 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
6 purported cause of action alleged therein, Defendant asserts that their conduct was not the  
7 proximate or legal cause of any damages allegedly suffered by Plaintiff.

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 **(Failure to Mitigate)**

10 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
11 purported cause of action alleged therein, Defendant asserts that Plaintiff may not recover for losses  
12 which could have been prevented by reasonable efforts on their part, or by expenditures that might  
13 reasonably have been made. Therefore, Plaintiff's recovery, if any, should be reduced by the failure  
14 of Plaintiff to mitigate her damages.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 **(Comparative Fault of Plaintiff)**

17 Without in any way admitting the allegations in Plaintiff's Complaint, and each and every  
18 purported cause of action alleged therein, Defendant asserts that if it is held liable for injuries or  
19 damages, if any, caused to Plaintiff, that Plaintiff herself is responsible in some part for said  
20 damages by her negligence, non-compliance with Plaintiff Decedent, VERA PLARES', health  
21 professional's orders, carelessness, or other wrongful conduct; and Defendant prays that any  
22 damages awarded to Plaintiff, if any, be diminished in proportion to the degree of fault attributed  
23 to Plaintiff.

24 **TWENTIETH AFFIRMATIVE DEFENSE**

25 **(Acts and/or Omissions of DOE Defendants)**

26 Without in any way admitting the allegations in Plaintiffs' Complaint, Defendants assert  
27 that Defendants are not legally responsible for the alleged acts/omissions of those defendants  
28 named herein as DOES 1-10.

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**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Third Parties)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff’s Complaint is barred in whole or in part because any injuries or damages allegedly sustained by Plaintiff was not the result of any acts, omissions or other conduct of Defendant. Further, any alleged injuries were caused in part or in whole by third parties or intervening occurrences.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Failure to Join Indispensable Parties)**

Without in any way admitting the allegations in Plaintiff’s Complaint, Defendant asserts that Plaintiff failed to join indispensable parties to the action pursuant to California Code of Civil Procedure section 389; thus, in the absence of the indispensable parties, complete relief cannot be accorded amongst those already party to this action. Additionally, the excluded parties’ interests will be impaired subjecting those parties to a substantial risk of double, multiple, or otherwise inconsistent obligations and to being affected by a judgment without their participation in the lawsuit.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Privilege)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff is barred because Defendant acted from a justifiable motive.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Ratification)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff’s causes of actions are barred from being asserted or from asserting any other right to relief against Defendant because Plaintiff has at all times ratified the acts, omissions and course of conduct of Defendant.

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**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(Essential Lawful Part of Business Operations)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff is barred because the alleged conduct, if true, would be an essential lawful part of Defendant’s business operations and/or consistent with industry practice.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

**(Failure to State a Claim for Punitive Damages)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff’s Complaint fails to state facts sufficient to constitute a basis for the imposition of punitive damages against Defendant.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Not Entitled to Attorney’s Fees)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that Plaintiff’s Complaint fails to allege facts sufficient to entitle Plaintiff to recover attorneys’ fees and costs.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Release)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that any liabilities as alleged in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, have been extinguished and released.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

**(No public Policy/Public Benefit)**

Without in any way admitting the allegations in the Complaint, Defendant asserts its acts and conduct at all relevant times, did not violate fundamental public policy concerns or inure to the benefit of the public at large.

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**THIRTIETH AFFIRMATIVE DEFENSE**

**(No Damages)**

Without in any way admitting the allegations in the Complaint, Defendant asserts that Plaintiff suffered no damages as a result of the alleged acts or conduct asserted in the Complaint against Defendant.

**THIRTY- FIRST AFFIRMATIVE DEFENSE**

**(Doctrine of Res Judicata/Collateral Estoppel)**

Without in any way admitting the allegations in the Complaint, Defendant asserts that Plaintiff’s claims are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

**(Justification, Fairness, Reasonableness and Good Faith)**

Without in any way admitting the allegations in the Complaint, Defendant asserts that its acts and conduct upon which Plaintiff’s Complaint is based were justified, fair, and reasonable under the given circumstances and were undertaken in good faith, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further its sole purpose of engaging in and continuing its business. Therefore, on this basis, Plaintiff is barred from recovery on the causes of action asserted in Plaintiff’s Complaint.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

**(No Facts for Welfare & Institutions Code Section Remedies)**

Without in any way admitting the allegations in Plaintiff’s Complaint, Defendant asserts Plaintiff’s Complaint fails to state sufficient facts to warrant the recovery of any damages, fees or costs provided by Welfare & Institutions Code § 15657.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

**(Limitation of Contingency Fee)**

Without in any way admitting the allegations in Plaintiff’s Complaint, Defendant asserts, by way of affirmative defense, the applicable provisions of California Business and Professions Code § 6146.

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**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

**(Recovery Limited by MICRA)**

The answering Defendant alleges that pursuant to Sections 3333.1 and 3333.2 of the California Civil Code and Section 667.6 of the California Code of Civil Procedure, it intends, at the time of trial, to diminish, strike or eliminate, and/or diminish those damages allegedly sustained by Plaintiff, both as allegedly sustained and otherwise.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

**(Limitation of Contingency Fee)**

Without in any way admitting the allegations in Plaintiff’s Complaint, Defendant asserts, by way of affirmative defense, the applicable provisions of California Business and Professions Code section 6146.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Plaintiffs’ Complaint is barred by Civil Code Section 1714.8)**

Without in any way admitting the allegations in Plaintiff’s Complaint, Defendant asserts that the damages and losses incurred by Plaintiff was the result of and/or caused by the natural course of Plaintiff’s condition, and/or were the natural or expected results of reasonable care and treatment rendered to Plaintiff for her condition.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Recovery is Subject to California Code of Civil Procedure Section 667.7)**

Without in any way admitting the allegations in Plaintiff’s Complaint, Defendant asserts that any recovery by Plaintiff under the Complaint, and/or any cause of action therein, are controlled by the provisions of Code of Civil Procedure §667.7.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

**(Limitation by California Civil Code Section 1431.2)**

Without in any way admitting the allegations in Plaintiff’s Complaint, Defendant asserts that in the event that Defendant is found to be negligent or otherwise liable to Plaintiff, which is expressly denied, the liability of Defendant is limited by reason of the provisions of California Civil Code section 1431.2.

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**FOURTIETH AFFIRMATIVE DEFENSE**

**(Unknown Affirmative Defenses)**

Without in any way admitting the allegations in Plaintiff’s Complaint, and each and every purported cause of action alleged therein, Defendant asserts that they presently have insufficient knowledge or information upon which to form a belief as to whether it may have additional defenses available. Defendant reserves the right to assert additional affirmative defenses in the event discovery or further analysis indicate that additional, but presently unknown or unstated, affirmative defenses would be applicable.

**PRAYER**

**WHEREFORE**, having fully answered Plaintiff’s Complaint on file herein, these answering Defendant prays that they be dismissed with prejudice and costs of suit, that reasonable attorney’s fees are awarded to the extent authorized by law and for such other and further relief as the Court may deem just and proper.

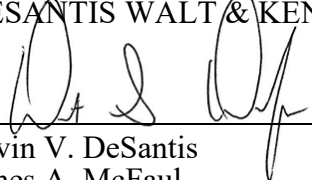
**JURY DEMAND**

Defendant hereby demands a trial by jury on all issues alleged in Plaintiff’s Complaint, and by way of this Answer, which are so triable.

Dated: August 2, 2024

DUNN DESANTIS WALT & KENDRICK, LLP

By:

  
\_\_\_\_\_

Kevin V. DeSantis  
James A. McFaul  
Dustin S. Delp  
Attorneys for Defendant  
SUNCREST HOSPICE SAN JOSE LLC,  
DBA SUNCREST HOSPICE

3 **PROOF OF SERVICE**

4 I, Lauren Davey, declare that: I am over the age of 18 years and not a party to the case; I  
5 am employed in or am a resident of, the County of San Diego, California where the mailing occurs;  
6 my business address is 750 B Street, Suite 2620, San Diego, California 92101 and my email is  
7 ldavey@ddwklaw.com.


8 On August 2, 2024 I caused to be served the following document(s):

9 **1. DEFENDANT SUNCREST HOSPICE SAN JOSE, LLC, DBA SUNCREST  
HOSPICE ANSWER TO COMPLAINT**

10 XX **by Electronic Transmission (E-Mail).** I caused the above-referenced document(s) to be  
11 sent to the person(s) at the e-mail address: *See Attached*. I did not receive, within a  
12 reasonable time after the transmission, any electronic message or other indication that the  
transmission was unsuccessful.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing  
14 is true and correct.

15 Dated: August 2, 2024

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Lauren Davey

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**SERVICE LIST**

<p>Paul Q. Goyette Derek K. Ulmer Victoria L. Gutierrez GOYETTE, RUANO &amp; THOMPSON, INC. 2366 Gold Meadow Way, Suite 200 Gold River, CA 95670 (916) 851-1900 Emails: paul@grtlaw.com; derek@grtlaw.com; victoria@grtlaw.com</p>	<p>Attorneys for Plaintiffs, ADAM PLARES, SR., Individually and as Successor-in-Interest to the Estate of Vera Plares</p>
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