

EVAN C. NELSON (SBN 172957)
LAW OFFICE OF EVAN C. NELSON
1261 LOCUST STREET, #191
WALNUT CREEK, CA 94596
(925) 247-8992
EMAIL: EVANCNELSON.LAW@GMAIL.COM

ATTORNEY FOR PLAINTIFF MICHAEL DUBRO AS TEMPORARY
CONSERVATOR OF THE PERSON AND ESTATE OF KATHERINE
M. DUBRO AND/OR AS "NEXT FRIEND" FOR KATHERINE M.
DUBRO, AND FOR PLAINTIFF ROBERT DUBRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

MICHAEL DUBRO as TEMPORARY
CONSERVATOR for the PERSON and ESTATE of
KATHERINE M. DUBRO and/or as "NEXT FRIEND"
for KATHERINE M. DUBRO; and ROBERT DUBRO,

Plaintiffs

v.

DEFENDANTS KRISTEN BONEY; LEGAL
ASSISTANCE FOR SENIORS; TERESA GREEN;
CAMPBELL GREEN, LLP; DENNIS DUBRO; LEO
BAUTISTA; EMELIE S. (JOANN) BAUTISTA;
JACKIE MONTERROSA; DANIEL PRESHER;
MARK CEDERBORG; DANIEL LEAHY; PETER
SHELTON; KELLIE HAYES; JAMES PHILLIPS;
KATELYN PHILLIPS; DOUGLAS HOUSMAN;
GEORGE MCNITT; LIVHOME INC. DBA
LIVHOME OF SAN JOSE; L AND C CARE
PROVIDERS, INC.; DR. MICHELLE DHANAK;
SHARON BALDOZA; ELDERCONSULT
GERIATRIC MEDICINE; VITAS HEALTHCARE;
ACE HOME HEALTH AND HOSPICE, DR. STEVEN
CURRAN, THE SUPERIOR COURT OF
CALIFORNIA, COUNTY OF ALAMEDA (FOR
DECLARATORY RELIEF ONLY); AND DOES 1-25,

Defendants.

Case No: ACSC RG20081460

**COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

CAUSES OF ACTION:

1. Violation of Federal Rights
(42 U.S.C. § 1983);
2. Civil Conspiracy;
3. Violation of Americans with
Disabilities Act, Title II
(Cal. Gov't. Code § 12940(m));
4. Violation of Unruh Civil Rights Act
Disability Discrimination;
5. Violation of Unruh Civil Rights Act
Marital Status Discrimination;
6. False Imprisonment;
7. Breach of Fiduciary Duties;
8. Elder Abuse (§ 15610.07(a));
9. Elder Abuse (§ 15610.07(b));
10. Professional Negligence;
11. Negligence;
12. Declaratory Relief

Prayer for Relief

Demand for Jury Trial

1 Plaintiffs allege as follows:

2 **I. INTRODUCTION**

3 1. Defendants engaged in a continuing conspiracy, initially conspiring to abuse process and
4 strip Plaintiff Katherine M. Dubro of her due process rights and unlawfully force her into a
5 conservatorship against her will in violation of her federal civil rights and California law, and then
6 conspiring further to cover up the initial conspiracy.

7 2. The continuing, cover up conspiracy caused Plaintiff Katherine M. Dubro to be isolated
8 from her family, drugged as a form of chemical restraint, falsely imprisoned, unconscionably neglected
9 and left her wasting away without proper nutrition/hydration and with an unsightly, cancerous cyst that
10 was allowed to grow unchecked and with the cancer undiagnosed creating a substantial increased risk
11 for metastasis to other parts of her body, which is still an ongoing risk for her.

12 3. Fortunately, four of Plaintiff Katherine M. Dubro's children were finally able to have one
13 of her sons, Michael Dubro, appointed as temporary conservator for her, on or about August 11, 2020,
14 so that he could stop the neglect and significantly correct and reverse the deleterious health and
15 emotional impacts of the abuse before their mother was led into a premature demise, which was the
16 intent and probable outcome of the deprivation of nutrition/hydration and other neglect that was being
17 concealed.

18 4. Due to Plaintiff Katherine M. Dubro's known disability of dementia, she is, and at all
19 relevant times was, unable to prosecute her claims and the continuing conspiracy prevented discovery
20 and prosecution of her claims until her son was appointed as temporary conservator with standing to
21 initiate these claims as temporary conservator and to prosecute them as temporary conservator and/or as
22 a "next friend" dedicated to his mother's, Plaintiff Katherine M. Dubro's, best interests.

23 5. The conservatorship trial was held without compliance with the jurisdictional
24 prerequisites of California Probate Code section 1825, as Plaintiff Katherine M. Dubro was not present
25 for the trial and had no counsel appearing for her – and, as a California Appellate Court recently stated,
26 "the lights to the courtroom were never turned on" because she was neither seen nor heard at the trial.

27 6. Plaintiff Katherine M. Dubro was denied her right to counsel both during and after the
28 conservatorship trial, which prevented her from participating in the conservatorship trial and precluded

1 her ability to appeal the trial court order that voided her advanced health care directive and durable
2 power of attorney in order to force a conservatorship even though she had completely provided for her
3 needs through these estate planning documents that also included a trust with assets sufficient to provide
4 for all of her financial needs.

5 7. Plaintiff Katherine M. Dubro's right to a jury trial was improperly waived as it was not
6 waived by her or by her attorney, since she was unable to consent due to her known disability of
7 dementia, and since she was deprived of her right to counsel even though request had been specifically
8 made for appointment of counsel for her.

9 8. Defendants' conspiracy continued during operation of the conservatorship, as a cover up
10 of the initial conspiracy to deprive Katherine of her rights under the United States Constitution and the
11 Americans with Disabilities Act, and to unlawfully force her into a private conservatorship.

12 9. Defendants' continuing conspiracy and neglect included a continued denial of her right to
13 appointment of legal counsel to zealously advocate for her rights and well-being and led to isolation of
14 Plaintiff Katherine M. Dubro from her family, improperly drugging her as a form of chemical restraint,
15 prematurely forcing her into hospice care for about twenty (20) months, depriving her of social
16 interactions and outings and otherwise curtailing her physical and psychosocial development, placing
17 her into the most restrictive environment, rather than the least restrictive environment, all contrary to
18 law and in violation of her rights.

19 10. Defendants trampled on Plaintiff Katherine M. Dubro's rights, rather than protecting
20 them, as they acted for personal gain and illegally took control of her trust to garner fees for themselves
21 and other Defendants for services Plaintiff Katherine M. Dubro never wanted, and that she did not need
22 because she had provided for her own finances and needs through estate planning documents, including
23 a trust, an advanced health care directive and a durable power of attorney.

24 11. Defendants' continuing conspiracy and cover up resulted in violations of Plaintiff
25 Katherine M. Dubro's federal rights, rights under the Americans with Disabilities Act, rights under the
26 California Unruh Civil Rights Act, and caused her to suffer False Imprisonment, Breach of Fiduciary
27 Duties owed to her, Elder Abuse, Professional Negligence and other Negligence, all as set forth in the
28 causes of action stated below.

II. PARTIES

12. Plaintiff Katherine M. Dubro is a ninety-three year old mother, grandmother and great grandmother with dementia who resides in Fremont, California within Alameda County.

13. Plaintiff Robert Dubro is one of Plaintiff Katherine M. Dubro's five children and resides within Alameda County.

14. Defendant Kristen Boney was Plaintiff Katherine M. Dubro's court-appointed attorney who withdrew as counsel on or about June 11, 2016 and her firm, Legal Assistance for Seniors ("LAS"), was re-appointed by the court as counsel for Plaintiff Katherine M. Dubro in late-2019, and again withdrew as counsel in early-2020. Ms. Boney practices in Alameda County with a work address at 333 Hegenberger Road, Suite 850, Oakland, CA 94621-1416 within Alameda County.

15. Defendant Legal Assistance for Seniors ("LAS") is the entity for which Defendant Kristen Boney works, and at all relevant times worked, and LAS was assigned as counsel for Plaintiff Katherine M. Dubro, withdrew as counsel on June 11, 2016 and LAS was re-appointed by the court as counsel for Plaintiff Katherine M. Dubro in late-2019 and again withdrew in early-2020. LAS resides at 333 Hegenberger Road, Suite 850, Oakland, CA 94621 within Alameda County.

16. Defendant Teresa Green was the attorney representing the petitioner to place Plaintiff Katherine M. Dubro into a conservatorship against her wishes whose business office is located at 1970 Broadway, #625, Oakland, CA 94612 within Alameda County.

17. Defendant Campbell Green LLP is the law firm for which Teresa Green works, and at all relevant times worked, and resides within Alameda County at 1970 Broadway #625, Oakland, CA 94612.

18. Defendant Dennis Dubro is one of Plaintiff Katherine M. Dubro's children who resides within Alameda County at 4200 Irvington Blvd., Apt. 203, Fremont, CA 94538-4854.

19. Defendant Leo Bautista practices as a professional fiduciary with his firm of Bautista & Bautista, with an office on Grant Street in Berkeley, CA 94703 and was appointed as conservator for Plaintiff Katherine M. Dubro, which conservatorship was located within Alameda County.

20. Defendant Emilie S. (Joann) Bautista held herself out as a professional fiduciary working out of Defendant Leo Bautista's office located on Grant Street in Berkeley, CA 94703 and also held

1 herself out as conservator for Plaintiff Katherine M. Dubro, which conservatorship was located within
2 Alameda County.

3 21. Defendant Jacqueline Monterrosa held herself out as a professional fiduciary working out
4 of Defendant Leo Bautista's office located within Alameda County on Grant Street in Berkeley, CA
5 94703 and also held herself out as conservator for Plaintiff Katherine M. Dubro, which conservatorship
6 was located within Alameda County.

7 22. Defendant Daniel Presher practices law in Alameda County with an office located at 303
8 W Joaquin Ave #140, San Leandro, CA 94577 and was attorney for the conservator in the
9 conservatorship of Katherine M. Dubro, which was located within Alameda County.

10 23. Defendant Mark Cederborg held himself out as guardian ad litem for both the
11 conservatorship of Katherine M. Dubro and for the matter filed relating to her trust, both of which are
12 located within Alameda County.

13 24. Defendant Daniel Leahy is an attorney who had an office located within Alameda County
14 at 1970 Broadway Suite 1200, Oakland, CA 94612, who accepted appointment as an interim trustee for
15 Plaintiff Katherine M. Dubro's trust, which is also located within Alameda County.

16 25. Defendant Peter Shelton is an attorney with an office located at 2041 Bancroft Way #206,
17 Berkeley, CA 94704, who was attorney for an interim trustee for Plaintiff Katherine M. Dubro's trust,
18 which is also located within Alameda County (apparently, now sharing an office with Defendant Peter
19 Shelton).

20 26. Defendant Kellie Hayes practices as a professional fiduciary with an office located within
21 Alameda County and was appointed as temporary conservator for Plaintiff Katherine M. Dubro and as
22 interim trustee for Plaintiff Katherine M. Dubro's trust, both of which (the conservatorship and the trust)
23 are located within Alameda County.

24 27. Defendant James Phillips practices law in Alameda County with an office located at 4900
25 Hopyard Rd. #260, Pleasanton, CA 94588 within Alameda County and was an attorney for the
26 temporary conservator in the conservatorship of Katherine M. Dubro and an attorney for the interim
27 trustee of Plaintiff Katherine M. Dubro's trust, both of which (the conservatorship and the trust) are
28 located within Alameda County.

1 28. Defendant Katelyn Phillips practices law in Alameda County with an office located at
2 4900 Hopyard Rd. #260, Pleasanton, CA 94588 within Alameda County and was an attorney for the
3 temporary conservator in the conservatorship of Katherine M. Dubro and an attorney for the interim
4 trustee of Plaintiff Katherine M. Dubro's trust, both of which (the conservatorship and the trust) are
5 located within Alameda County.

6 29. Defendant Douglas Housman practices law in Alameda County and was an attorney for
7 the temporary conservator in the conservatorship of Katherine M. Dubro and is an attorney for the
8 interim trustee of Plaintiff Katherine M. Dubro's trust, both of which (the conservatorship and the trust)
9 are located within Alameda County.

10 30. Defendant George McNitt practices law in Alameda County with an office located within
11 Alameda County at 2041 Bancroft Way, Suite #206 in Berkeley, CA 94704 (the same office address as
12 Defendant Peter Shelton) and was appointed only recently as Plaintiff Katherine M. Dubro's attorney on
13 or about January 24, 2020.

14 31. Defendant LivHOME Inc. dba LivHOME of San Jose provided home care services for
15 Plaintiff Katherine M. Dubro at her residence within Alameda County after she was placed into a
16 conservatorship, which is also located within Alameda County.

17 32. Defendant L and C Care Providers, Inc. (a.k.a. CareProviders-24 or CP-24) provided
18 home care services for Plaintiff Katherine M. Dubro at her residence within Alameda County after she
19 was placed into a conservatorship, which is also located within Alameda County.

20 33. Defendant Dr. Michelle Dhanak practices medicine within Alameda County and provided
21 medical care for Plaintiff Katherine M. Dubro at her residence within Alameda County after she was
22 placed into a conservatorship, which is also located within Alameda County.

23 34. Defendant ElderConsult Geriatric Medicine is a medical practice providing medical
24 services within Alameda County and for which Dr. Dhanak was working at all relevant times herein.

25 35. Defendant Sharon Baldoza, RN provides home medical care within Alameda County and
26 provided medical care for Plaintiff Katherine M. Dubro at her residence within Alameda County after
27 she was placed into a conservatorship, which is also located within Alameda County.
28

36. Defendant Vitas Healthcare provides hospice services within Alameda County and provided such for Plaintiff Katherine M. Dubro at her residence within Alameda County after she was placed into a conservatorship, which is also located within Alameda County.

37. Defendant Ace Home Health and Hospice provides hospice services within Alameda County and provided such for Plaintiff Katherine M. Dubro at her residence within Alameda County after she was placed into a conservatorship, which is also located within Alameda County.

38. Defendant Dr. Steven Curran practices medicine within Alameda County with an office located at 46690 Mohave Dr., Fremont, CA 94539 and provided medical care for Plaintiff Katherine M. Dubro at his medical office within Alameda County after she was placed into a conservatorship, which is also located within Alameda County.

39. The names, identities and/or circumstances involving DOES 1-25 are currently unknown and will be provided upon discovery through amendment(s) to this Complaint.

40. Each Defendant was acting as the managerial agent, assistant, promoter and/or alter ego of each other Defendant such that they acted with a unity of interest and injustice would result by treating them as separate defendants and/or entities.

III. JURISDICTION AND VENUE

41. Concurrent jurisdiction exists in federal and state court for the claims set forth as the First Cause of Action (42 U.S.C. § 1983 – Violations of Federal Civil Rights) and the Third Cause of Action (Violation of the Americans with Disabilities Act, Title II).

42. The California Superior Court has jurisdiction for all claims set forth herein.

43. Alameda County is the proper venue for all claims asserted herein, since all Defendants conduct business within Alameda County and most, if not all, of the wrongful conduct alleged herein took place within Alameda County and the harms were suffered by Plaintiffs within Alameda County.

44. Judge Wynne S. Carville, Presiding Judge of the California Superior Court for the County of Alameda, is requested through a concurrently filed motion, to assign this matter “for all purposes” to an outside judge to avoid any actual or perceived conflict of interest as set forth in California Code of Civil Procedure §170.1(a)(6)(A).

IV. GENERAL ALLEGATIONS

44. Upon finally being appointed as temporary conservator for his mother on August 11, 2020, when his letters of temporary conservatorship issued, Plaintiff Michael Dubro as Temporary Conservator for the Person and Estate of Katherine M. Dubro was finally able to discover and prosecute claims on behalf of his mother, Katherine M. Dubro.

45. Plaintiff Katherine M. Dubro is, and at all relevant times was, disabled by dementia and unable to prosecute her claims on her own behalf.

46. Defendants' continuing conspiracy and neglect caused Plaintiff Katherine M. Dubro to waste away through denial of proper nutrition/hydration, which placed her in a dire condition and caused undiagnosed and unchecked growth of a cancer in an unsightly and unhealthy cyst on the back of her neck that also resulted in a substantial increased risk of metastasis due to the failure to timely diagnose and address the cancer.

47. Defendants' continuing conspiracy and neglect isolated Plaintiff Katherine M. Dubro from her family, improperly drugged her as a form of chemical restraint, prematurely forced her into hospice care for about twenty (20) months, deprived her of social interactions and outings and otherwise curtailed her physical and psychosocial development and placed her into the most restrictive environment, rather than the least restrictive environment, all contrary to law.

48. Defendants trampled on Plaintiff Katherine M. Dubro's rights, rather than protecting them, as they acted for personal gain and garnered fees for themselves and other Defendants for services Plaintiff Katherine M. Dubro never wanted and did not need because she had provided for her own finances and needs through estate planning documents, including a trust, an advanced health care directive and a durable power of attorney.

49. Defendants conspired with each other and with the California Superior Court to violate Plaintiff Katherine M. Dubro's federal rights, forcing her into a conservatorship against her will without compliance with the jurisdictional prerequisites mandated under California Probate Code section 1825.

50. Defendants acted under color of state law to deprive Plaintiff Katherine M. Dubro of her federal rights, including (i) rights under the Americans with Disabilities Act to have reasonable accommodations provided, including appointment of legal counsel to zealously advocate for her due to

her known disability of dementia; (ii) rights to due process under the 14th Amendment including right to counsel, right to a jury trial, compliance with jurisdictional requirements and other guaranteed due process prior to taking away property and liberties; (iii) to not be retaliated against for assertion of Constitutional rights (applicable to both Plaintiffs Katherine M. Dubro and Robert Dubro); and/or (iv) to not have false testimony/false evidence presented to take away property rights and liberties (applicable to both Plaintiffs Katherine M. Dubro and Robert Dubro).

51. Defendants' continued their conspiracy against Plaintiffs to falsely imprison Plaintiff Katherine M. Dubro through use of chemical restraints and confinement to her home, and often to her bed, all to unlawfully isolate her from her family.

52. Defendants, through their continuing conspiracy, violated the Americans with Disabilities Act and the California Government Code through discrimination against Plaintiffs due to Plaintiff Katherine M. Dubro's known disability, and violated California's Unruh Civil Rights Act through discrimination based on Katherine's disability and discrimination against Plaintiff Robert Dubro (and against Plaintiff Katherine M. Dubro for her association with Plaintiff Robert Dubro) based on his marital status, as Plaintiff Robert Dubro is Plaintiff Katherine M. Dubro's unmarried, adult son.

53. The continuing conspiracy resulted in breach of fiduciary duties owed to Plaintiffs resulting in Elder Abuse, Professional Negligence and other neglect as Defendants also improperly took over Plaintiff Katherine M. Dubro's 2013 Dubro Family Trust in direct contravention of Katherine's expressly designated trustees (trustee and successor trustee) and have already siphoned in excess of Two Million Dollars (\$2,000,000) from her trust's value while refusing to provide complete accountings.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

42 U.S.C. § 1983 – VIOLATION OF FEDERAL CIVIL RIGHTS (ADA TITLE II, 14th AMENDMENT, RETALIATION, FABRICATED EVIDENCE)

54. Paragraphs 1 through 53, inclusive, are incorporated by reference as though set forth fully in this cause of action.

55. Defendants Kristen Boney, Legal Assistance for Seniors, Teresa Green, Campbell Green LLP, Daniel Presher, Leo Bautista, Mark Cederborg, Daniel Leahy, Peter Shelton, James Phillips,

1 Katelyn Phillips, Douglas Housman, Kellie Hayes, DOES 1-25 and each of them, conspired to and did
2 violate Plaintiff Katherine M. Dubro's rights under the Americans with Disabilities Act, by contributing
3 to and causing denial of her right to be provided the reasonable accommodation of appointed counsel to
4 advocate for her due to her known disability of dementia.

5 56. These Defendants, and each of them violated Plaintiff Katherine M. Dubro's rights to due
6 process prior to depriving her of liberties and property.

7 57. These Defendants, and each of them, retaliated against (or enabled, assisted, encouraged
8 others to retaliate against) Plaintiffs Katherine M. Dubro and Robert Dubro when attempts were made to
9 restore Katherine's rights.

10 58. These Defendants, along with Defendants Dr. Steven Curran, Emilie S. (Joann) Bautista,
11 Jackie Monterrosa, Dennis Dubro and L and C Care Providers, Inc., and each of them, manufactured
12 false evidence against (or enabled, assisted, encouraged others to manufacture false evidence against)
13 Plaintiff Robert Dubro in furtherance of their violations of Plaintiff Katherine M. Dubro's and Plaintiff
14 Robert Dubro's federal rights.

15 59. Each Defendant was acting or purporting to act in the performance of their official duties
16 under color of state law or as a private actor (i) performing a traditional, exclusive public function in
17 relation to a conservatorship; (ii) willfully taking the actions discussed herein at the direction of the
18 courts and/or court-appointed officers; or (iii) willfully acting jointly with state courts and/or court-
19 appointed officers in violating Katherine M. Dubro's federal rights as discussed herein.

20 60. Alternatively, and in light of the circumstances of this case, the state has so significantly
21 involved itself in the private conduct involved in conservatorships that the private parties may fairly be
22 termed state actors since, among other factors, the state heavily regulates conservatorship matters, or
23 compelled or encouraged the particular conduct described herein.

24 61. These Defendants, and each of their, conduct (1) violated Plaintiff Katherine M. Dubro's
25 rights to reasonable accommodations under the Americans with Disabilities Act by not providing her
26 competent counsel to zealously advocate on her behalf, (2) violated Katherine's rights to due process
27 guaranteed by the Fourteenth Amendment to the United States Constitution, (3) violated rights under
28

1 federal law to not be retaliated against for assertion of Constitutional rights, and/or (4) violated rights to
2 not have false evidence presented in association with deprivation of liberties and property.

3 62. As a result of Defendants', and each of their, conduct described herein, Katherine was
4 harmed economically, physically, and psychosocially according to proof at trial.

5 63. Defendants', and each of their, conduct described herein was a substantial factor in
6 causing Katherine's harm.

7 64. Katherine is entitled to recover damages, including economic, non-economic and
8 potentially punitive damages, all according to proof at trial.

9 ***Violated ADA – Failure to Provide Reasonable Accommodation of Legal Counsel***

10 65. The Americans with Disabilities Act (the "ADA") is federal legislation that protects
11 persons with known disabilities from being discriminated against on the basis of their disability.

12 66. ADA prohibited discrimination includes failure to make reasonable modifications in
13 policies, practices or procedures to afford persons with disabilities the same access to goods, services,
14 facilities, privileges, advantages or accommodations as those enjoyed by persons without the disability.

15 67. The ADA specifically applies to state courts in providing reasonable accommodations to
16 persons with disabilities.

17 68. These Defendants, and each of them, acting alone and in concert with each other and with
18 the California Superior Court and/or court-appointed officials, deprived Katherine M. Dubro of her
19 rights to participate in the litigation that resulted in taking away her liberties and property by improperly
20 forcing her into a conservatorship that she had expressly made clear she did not want.

21 69. In particular, Defendants' and each of their conduct denied Katherine an ability to speak
22 on her own behalf during the conservatorship trial, because (i) she was not present during the trial as
23 mandated under California Probate Code section 1825, (ii) her right to a jury trial was improperly
24 waived, and (iii) she was not provided the reasonable accommodation of appointed competent legal
25 counsel to zealously advocate for her right to not be placed into conservatorship against her will.

26 ***14th Amendment – Deprivation of Liberty and Property Without Due Process***

27 70. These Defendants, and each of them, acting alone and in concert with each other and with
28 the California Superior Court and/or court-appointed officials, deprived Katherine M. Dubro of her due

process rights to participate meaningfully in the litigation that resulted in taking away her liberties and property, improperly forcing her into a conservatorship she had expressly made clear she did not want.

71. In particular, These Defendants' conduct denied Katherine's rights to due process, because (i) she was not present during the trial as mandated under California Probate Code section 1825, (ii) her right to a jury trial was improperly waived, (iii) she was not appointed competent legal counsel to zealously advocate for her right to not be placed into conservatorship against her will, (iv) through more than two and a half years of operation of the conservatorship, her right to counsel was continuously denied, and as a consequence (v) she was drugged as a form of chemical restraint, (vi) she was isolated from her family, (vii) she was falsely imprisoned by being house bound and bed bound, (viii) she was denied visits and outings, (ix) her assets were improperly and unnecessarily expended to pay Defendants for professional fiduciary services she did not need, (x) she was deprived nutrition/hydration and prudent medical care leading to allowing her to waste away, (xi) she was deprived competent medical care to remove an unsightly cyst that became cancerous and created a substantial risk of metastasis to other parts of her body, (xii) the private fiduciaries improperly took over her 2013 Dubro Family Trust and assigned themselves in direct contravention of her express designations of two of her children as trustee and successor trustee, (xiii) her trust has now had in excess of Two Million Dollars (\$2,000,000) of its value siphoned off, and (ix) Katherine's rights were not protected and her needs were intentionally disregarded or grossly neglected.

Retaliation

72. These Defendants and Defendants Dr. Steven Curran, Emilie S. (Joann) Bautista, Jackie Monterrosa, Dennis Dubro and L and C Care Providers, Inc., and each of them, acting alone and in concert with each other and with the California Superior Court and/or court-appointed officials retaliated against Katherine for exercising her constitutional rights, through her children's efforts.

73. By litigating to attempt to restore Katherine's rights of which she was deprived, as discussed above, Katherine's children were attempting to exercise her constitutionally protected rights to due process and to reasonable accommodations, including appointment of competent legal counsel to zealously advocate for her rights and to restore her rights that had been improperly taken from her.

74. In response to the exercise of Katherine's, and her children's, Constitutionally protected rights, Defendants, and each of them, acting alone and in concert with each other and with the court and/or court-appointed officials retaliated and, among other retaliatory conduct: (i) isolated Katherine from her children, (ii) removed Katherine's children from her home and from providing care and companionship to Katherine in accordance with her wishes, (iii) illegally administered powerful anti-psychotic and psychotropic, mood-altering and mind-altering drugs to Katherine as chemical restraints that carried substantial risks for causing brain damage and/or death, (iv) deprived Katherine of visits and outings, (v) falsely imprisoned Katherine, forcing her to be house bound and often bed-bound, (vi) humiliated her by forcing her to use diapers instead of being assisted to use the bathroom, (vii) deprived her of food and hydration allowing her to waste away, (viii) deprived her of proper medical care, which allowed her to waste away and to develop a cancer that remained undiagnosed well beyond when it should have discovered and was left untreated and was allowed to grow unchecked, which created a substantial increased risk for metastasis to other parts of her body, (ix) unnecessarily increased expenditures from her assets, and (x) improperly opposed Katherine's children's petition to have one of her children appointed to act as conservator for their mother, which delayed his appointment and increased the abuses of Katherine's rights, trust and person.

75. These Defendants, and each of their, actions discussed above were motivated, at least in part, by Katherine's and/or her children's exercise of their Constitutionally protected activity.

76. Defendants, and each of their, actions discussed above would likely have deterred a person of ordinary firmness from engaging in that protected activity.

77. Katherine and her children were harmed as a result of each Defendants conduct.

Fabricated Evidence

78. These Defendants and Defendants Dr. Steven Curran, Emilie S. (Joann) Bautista, Jackie Monterrosa, Dennis Dubro and L and C Care Providers, Inc., and each of them, deliberately fabricated evidence against (or enabled, assisted, encouraged others to fabricate evidence against) Robert Dubro and, by extension, against Katherine and, as a result of this evidence being used against Robert Dubro, both he and Katherine were deprived of their Constitutional rights to association, privacy and liberty without due process of law.

79. Defendants, and each of them, acting alone and in concert with each other and/or with court-appointed officials fabricated evidence including informing the court that Robert was inserting his finger in Katherine's anus while he was sleeping with her, all of which testimony was false.

80. This scurrilous testimony was intentionally misleading and false.

81. Defendants, and each of them, knew that the evidence in the form of these statements was false. In fact, none of the Defendants filed an immediate written report with Adult Protective Services (“APS”) as would have been required if they believed the statements to be true and, in the event that the statements were not false, then failure to provide an immediate written report with APS would constitute a misdemeanor and/or even a felony committed by each Defendant.

82. As a result of Defendants', and each of their, conduct, Robert Dubro and Katherine were deprived of the following rights, among others, without due process: (i) their right to mutual association, (ii) their right to privacy, which was invaded, (iii) their right to provide normal companionship to each other as mother and son, (iv) the right for Katherine to receive care from her children that she wanted, (v) the right for Katherine to have her children living with her as she desired, (vi) their property rights were violated as Robert Dubro was forced out of the house and Katherine was forced to provide living accommodations for non-family caregivers and to pay for others to provide care and companionship.

SECOND CAUSE OF ACTION

CIVIL CONSPIRACY

83. Paragraphs 1 through 82, inclusive, are incorporated by reference as though set forth fully in this cause of action.

84. Defendants, and each of them, acting in concert with the other Defendants, with the Superior Court and/or with court-appointed officers violated federal civil rights as set forth above in the First Cause of Action, violated the Americans with Disabilities Act, violated the Unruh Civil Rights Act, committed False Imprisonment, engaged in Elder Abuse, caused Breach of Fiduciary Duties, Professional Negligence and/or other neglect, all as set forth in the Causes of Action following this Second Cause of Action.

85. Plaintiffs, and each of them, were harmed by the Defendants, and each of their, joint action or conspiracy to commit violations of federal civil rights.

86. Plaintiffs, and each of them, were harmed by the Defendants, and each of their, joint action or conspiracy to commit violations of the Americans with Disabilities Act.

87. Plaintiffs, and each of them, were harmed by the Defendants, and each of their, joint action or conspiracy to commit violations of the Unruh Civil Rights Act.

88. Plaintiffs, and each of them, were harmed by the Defendants, and each of their, joint action or conspiracy to commit False Imprisonment.

89. Plaintiffs, and each of them, were harmed by the Defendants, and each of their, joint action or conspiracy to commit Elder Abuse.

90. Plaintiffs, and each of them, were harmed by the Defendants, and each of their, joint action or conspiracy to commit Breach of Fiduciary Duties.

91. Plaintiffs, and each of them, were harmed by the Defendants, and each of their, joint action or conspiracy to commit Professional Negligence.

92. Plaintiffs, and each of them, were harmed by the Defendants, and each of their, joint action or conspiracy to commit Negligence.

93. Defendants, and each of them, committed acts in the continuing conspiracy through an agreement to commit and/or aid and abet the wrongful acts complained of herein.

94. Defendants' agreement is implied by their conduct as described herein and, upon information and belief, may have additionally been made orally and/or in writing.

95. Each Defendant was aware that one or more of the other Defendants planned to engage in the wrongful acts complained of herein.

96. The facts and circumstances relevant to the inference of a conspiracy include all or most of the following:

(a) The attorney hired for Plaintiff Katherine M. Dubro, by her children, while Katherine was still competent, who was hired to zealously advocate for Katherine, was discharged by the court;

(b) The court-appointed attorney, Defendant Kristen Boney and LAS, who was supposed to then zealously advocate for Katherine, withdrew as counsel and was allowed to withdraw as counsel, before the conservatorship trial began, which left Katherine unrepresented at trial;

1 (c) Plaintiffs are informed and believe, and upon that information and belief allege that Kristen
2 Boney had an undisclosed conflict of interest due to a personal, intimate relationship with Defendant
3 Teresa Green, who was representing the party who had petitioned to force Katherine into a
4 conservatorship against her will;

5 (d) Defendant Legal Assistance for Seniors, the firm for which Defendant Kristen Boney
6 worked, has, and at all relevant times had, an undisclosed conflict of interest through its ties with
7 Defendant Teresa Green's law firm, Defendant Campbell Green LLP, including shared
8 principals/officers and significant financial ties that impacted the decision for Defendant Kristen Boney
9 to abandon her client, Plaintiff Katherine M. Dubro, before the conservatorship trial;

10 (e) The Superior Court Judge presiding over the conservatorship trial allowed the
11 conservatorship trial to proceed without Plaintiff Katherine M. Dubro ("Katherine") being present in
12 violation of the jurisdictional prerequisites of California Probate Code Section 1825;

13 (f) The Superior Court Judge presiding over the conservatorship trial knew Katherine had a
14 disability that prevented her from representing herself but refused to appoint Katherine legal counsel and
15 allowed the conservatorship trial to proceed without Katherine having an attorney to zealously represent
16 her rights and interests;

17 (g) Plaintiffs are informed and believe, and upon that information and belief allege, that the
18 Superior Court Judge presiding over the conservatorship trial had an undisclosed conflict and
19 relationship with Defendant Campbell Green LLP and, at or about the time of the conservatorship trial,
20 attended a concert with an attorney from Defendant Campbell Green LLP, the firm representing the
21 party who had petitioned to force Katherine into a conservatorship against her will;

22 (h) The Superior Court Judge presiding over the conservatorship trial improperly allowed
23 Katherine's right to a jury trial to be waived by persons not authorized to waive her right to a jury trial
24 because such purported waiver was not obtained from either Katherine or an attorney representing
25 Katherine, thereby enabling the Superior Court Judge to render a court order without an impartial jury
26 review of the evidence while Katherine was denied legal counsel and without Katherine being seen or
27 heard at the conservatorship trial, which failed to comply with the jurisdictional prerequisites of Probate
28 Code section 1825;

1 (i) Defendant Mark Cederborg, who was appointed as a limited scope guardian ad litem through
2 a stipulation only for him to provide a report, purported to waive Katherine's right to a jury trial even
3 though he had no authority to waive any of her rights and he then excused himself from the trial;

4 (j) The Superior Court then acted in absence of jurisdiction, through failure to comply with
5 Probate Code section 1825, and issued a court order forcing Katherine into a conservatorship against her
6 will while depriving her of her due process rights of a jury trial and for counsel to zealously advocate on
7 her behalf;

8 (k) Defendant Leo Bautista, who has been represented by Defendant Teresa Green in other
9 conservatorships, was then appointed as a private conservator for Katherine;

10 (l) Katherine was still denied appointment of an attorney and was, therefore, unable to appeal the
11 trial order forcing her into a conservatorship against her will;

12 (m) Mark Cederborg was invited back into the operation of the conservatorship by Defendant
13 Leo Bautista and his attorney Defendant Daniel Presher, and he inserted himself without a proper order
14 extending or expanding his limited scope appointment that was obtained through a stipulation without
15 Plaintiff Katherine M. Dubro's consent, which;

16 (n) Plaintiff Katherine M. Dubro never stipulated to appointment of a guardian ad litem or for
17 Defendant Mark Cederborg to be her guardian ad litem;

18 (o) The Superior Court Judge making the limited scope guardian ad litem appointment pursuant
19 to a stipulation (that did not include a stipulation from Plaintiff Katherine M. Dubro or from her
20 attorney) had previously ruled that she could not force appointment of a guardian ad litem on Plaintiff
21 Katherine M. Dubro;

22 (p) While Plaintiff Katherine M. Dubro was still being denied counsel to represent her and to
23 zealously advocate for her, Defendants attacked Katherine's 2013 Dubro Family Trust by petitioning
24 (and/or supporting the petition) to remove her designated trustee;

25 (q) When the designated trustee was suspended as a result of Defendants' petition to remove him
26 as trustee, Defendants sought appointment of a private fiduciary as trustee in direct contravention of the
27 express terms of the 2013 Dubro Family Trust, which designated one of Katherine's daughters, Maureen
28 Shroyer, as successor trustee;

1 (r) An attorney, Defendant Daniel Leahy, was appointed as successor interim trustee and he then
2 hired himself another attorney, Defendant Peter Shelton;

3 (s) While Plaintiff Katherine M. Dubro was being actively denied counsel to advocate for her,
4 there were four attorneys (Defendants Daniel Presher, Mark Cederborg, Daniel Leahy and Peter
5 Shelton) all being paid from Plaintiff Katherine M. Dubro's Trust while intentionally failing to protect
6 her rights, interests and wishes;

7 (t) Defendant Daniel Presher and Defendant Leo Bautista assigned the lucrative home care
8 contract relating to Katherine's forced conservatorship to Defendant LivHOME Inc., which is the
9 company for which Defendant Mark Cederborg's sister was working; and, did so without disclosing this
10 conflict of interest to the court or to Plaintiff Katherine M. Dubro's children;

11 (u) When Defendant LivHOME Inc. then began using chemical restraints on Plaintiff Katherine
12 M. Dubro to falsely imprison her and to isolate her from her family, Defendant Mark Cederborg
13 defended Defendant LivHOME Inc.'s improper conduct rather than protecting the conservatee;

14 (v) When Defendant LivHOME Inc.'s negligent care for Plaintiff Katherine M. Dubro resulted in
15 her having to be sent to the emergency room, Defendant Mark Cederborg defended Defendant
16 LivHOME Inc.'s, as well as Defendant Leo Bautista's, negligent conduct rather than protecting the
17 conservatee, Plaintiff Katherine M. Dubro and her rights;

18 (w) Four of Plaintiff Katherine M. Dubro's five children then petitioned to have one of her sons,
19 Michael Dubro, act as conservator for their mother to stop the mismanaged care that threatened her
20 health and life, to stop the illegal drugging used as a chemical restraint, to stop the isolation and false
21 imprisonment, and to restore some of Katherine's rights, including her right to be in the least restrictive
22 environment possible, her right to have as much companionship provided by her children as possible, as
23 well as other rights;

24 (x) Defendants Leo Bautista, Daniel Presher and Mark Cederborg opposed, with false evidence
25 and argument, the petition to allow one of Katherine's children to act as conservator for her and to
26 restore some of her rights;

27 (y) Defendants Leo Bautista, Daniel Presher, Mark Cederborg, Daniel Leahy, Peter Shelton, Dr.
28 Steven Curran, Jackie Monterrosa, Dennis Dubro, L and C Care Providers, Inc. and DOES 1-25 then

1 provided false evidence against Katherine's son, Robert Dubro, as set forth above in the First Cause of
2 Action, knowing that the testimony was false since none of them filed a written report with APS, which
3 failure to report would constitute a misdemeanor and/or felony if the testimony were not false;

4 (z) The Superior Court Judge ruled that Defendant Leo Bautista would be removed and replaced
5 by another professional fiduciary to act as conservator and Plaintiffs had interviewed Defendant Kellie
6 Hayes and agreed to have her replace Leo Bautista as conservator;

7 (aa) Before Defendant Kellie Hayes was appointed to replace Defendant Leo Bautista as
8 Katherine's conservator, Defendant Mark Cederborg met with Defendant Kellie Hayes and two of her
9 attorneys, Defendants James Phillips and Katelyn Phillips;

10 (bb) Defendant Kellie Hayes then appeared at court and informed the Superior Court Judge that
11 she would not agree to act as temporary conservator unless she was also allowed to act as successor
12 interim trustee in the stead of Defendant Daniel Leahy;

13 (cc) Immediately upon being appointed as both temporary conservator and interim successor
14 trustee, Defendant Kellie Hayes and her attorney, Defendant James Phillips, began arguing that Ms.
15 Hayes was appointed as permanent trustee, in direct contradiction of Katherine's Trust provisions and
16 the actual order of the Court and they prevented Katherine's children, the successor beneficiaries of her
17 Trust, from obtaining any information about the Trust even after specific requests for such information
18 were made;

19 (dd) Defendants Leo Bautista, Emilie S. (Joann) Bautista, Jackie Monterrosa, Daniel Presher,
20 Mark Cederborg, Dr. Michelle Dhanak, ElderConsult Geriatric Medicine, Sharon Baldoza, Vitas
21 Healthcare, Ace Home Health and Hospice, L and C Care Providers, Inc., LivHOME of San Jose and
22 possibly others carried out the conspiracy to further impinge on Plaintiff Katherine M. Dubro's rights, to
23 illegally drug her as a form of chemical restraint, to falsely imprison her in her own home and bed, to
24 isolate her from her family, to deny her visits and outings, to unnecessarily confine her to hospice care,
25 to neglect her care necessitating emergency room visits, to deprive her of nutrition/hydration leaving her
26 to waste away, and allowing a cyst that should have been removed to go unchecked with a cancer
27 growth that eventually grew so large that it created a substantial increased risk of metastasis to other
28 parts of Katherine's body;

1 (ee) Defendants Kellie Hayes, James Phillips, Katelyn Phillips, Douglas Housman, George
2 McNitt, Dr. Michelle Dhanak, ElderConsult Geriatric Medicine, Sharon Baldoza, L and C Care
3 Providers, Inc., and possibly others carried out the conspiracy to deprive Plaintiff Katherine M. Dubro of
4 nutrition and exercise, allowing her to waste away, as noted in doctor's notes and other care records,
5 without intervention to attempt to restore her health and allowed the cyst that should have been removed
6 to go unchecked with a cancer growth and which cyst grew so large that it became an infection risk and
7 other health hazard, and the cancer within it grew so large that it created a substantial increased risk of
8 metastasis to other parts of Katherine's body;

9 (ff) Immediately after being allowed to take over as temporary conservator for his mother,
10 Michael Dubro was able to stop Plaintiff Katherine M. Dubro's weight loss, help her gain a substantial
11 amount of weight to prevent her from simply wasting away, and to have the cyst removed and the cancer
12 diagnosed with appropriate follow up;

13 (gg) Notwithstanding the fact that Michael Dubro and Plaintiff Katherine M. Dubro's other
14 children effectively saved their mother's life, Defendants Mark Cederborg and George McNitt falsely
15 argued that Michael Dubro had "utterly failed" as conservator for his mother without any facts or
16 evidence to support their argument;

17 (hh) After finally having the court appoint an attorney to represent Plaintiff Katherine M. Dubro,
18 Defendant George McNitt was court-appointed (after a brief re-appointment of Defendant LAS) but he
19 refused to zealously advocate for Plaintiff Katherine M. Dubro, to secure her person and estate against
20 mismanagement or to attempt to restore her rights. Instead, Defendant George McNitt asserted that his
21 only assignment was to help decide who should be the conservator by "weighing in" on the decision for
22 whom should be appointed as conservator;

23 (ii) Defendant George McNitt joined with Defendants Mark Cederborg and Douglas Housman to
24 continue to cover up the conspiracies that led to all of the violations of Katherine's rights and
25 mismanagement of her person and estate by the private fiduciaries and by Defendant Mark Cederborg;

26 (jj) Defendant George McNitt refused to join in an appeal aimed at securing Katherine's 2013
27 Dubro Family Trust resources, which left Plaintiff Katherine M. Dubro again unrepresented in the
28 appeal, and he made no attempt to secure and/or to protect her rights;

1 (kk) Plaintiffs are informed and believe, and upon that information and belief allege, that
2 Defendant George McNitt has an undisclosed conflict interest that prevents him from being a zealous
3 advocate for Plaintiff Katherine M. Dubro, due to his professional associations with one or more of the
4 other Defendants, specifically including Defendant Peter Shelton with whom he now shares an office;

5 (ll) Defendant Mark Cederborg hired himself an attorney admittedly “to protect his [Defendant
6 Mark Cederborg’s] rights” as an acknowledgment that Mr. Cederborg should not be entitled to quasi-
7 judicial immunity due to the particular circumstances of the case, including the facts that:

8 (1) Mr. Cederborg sought out the appointment through discussions and promptings by
9 Defendant Teresa Green and/or other co-conspirators, rather than being independently assigned;

10 (2) Mr. Cederborg acted beyond his limited powers by waiving Katherine’s right to a jury
11 trial, and by trampling rather than protecting other of her rights, without authority to do so and
12 exceeded the scope of the stipulated appointment without an order extending or expanding his
13 appointment (which stipulated appointment was itself improper as to Katherine’s rights as such
14 did not include stipulation by Katherine nor her attorney);

15 (3) Katherine was denied appointment of independent legal counsel to zealously advocate
16 for her rights and Mr. Cederborg was complicit in this derogation of her rights, which zealous
17 advocate was an absolute necessity to provide a check on Mr. Cederborg and the other co-
18 conspirators trying to impinge on Katherine’s rights;

19 (4) There has been no effective judicial supervision over Mr. Cederborg’s and others’
20 conduct as the court participated in and/or knowingly allowed the open violations of Katherine’s
21 rights contrary to federal law and California law; and

22 (5) No reasonable appellate process was available because Katherine is, and at all
23 relevant times was, incapacitated and was denied legal counsel to zealously advocate for
24 protection of her rights;

25 (mm) Notwithstanding the admission that Defendant Mark Cederborg’s attorney was hired to
26 protect Mr. Cederborg’s interests and not to protect Katherine’s rights, both Mr. Cederborg’s own fees
27 and his attorney’s fees were paid from Plaintiff Katherine M. Dubro’s trust by Defendant Kellie Hayes
28 and her attorney Defendant Douglas Housman without court knowledge or approval.

THIRD CAUSE OF ACTION

**VIOLATION OF AMERICANS WITH DISABILITIES ACT, TITLE II
(ALSO, CALIFORNIA GOVERNMENT CODE § 12940(m))
FAILURE TO PROVIDE REASONABLE ACCOMMODATION OF LEGAL COUNSEL**

97. Paragraphs 1 through 96, inclusive, are incorporated by reference as though set forth fully in this cause of action.

98. The Americans with Disabilities Act and/or California Government Code section 12940(m) were violated through failure to ensure Katherine's right to reasonable accommodations were met by appointment of competent legal counsel to provide her with zealous advocacy and legal representation to allow her to participate in the litigation aimed at forcing her into a conservatorship against her will.

99. Katherine's rights to reasonable accommodations were violated by the Alameda County Superior Court, by Defendants Kristen Boney and LAS as Katherine's appointed counsel who withdrew their representation of Katherine, and by Defendants Mark Cederborg, Daniel Presher, Daniel Leahy, Peter Shelton, Leo Bautista, James Phillips, Katelyn Phillips, Douglas Housman, and Kellie Hayes as private fiduciaries, purported guardian ad litem and/or attorneys for private fiduciaries all of whom were, at relevant times, charged with responsibilities to protect Katherine's rights.

100. The Americans with Disabilities Act, Title II and California Government Code section 12940(m) apply to the courts and court-appointed officers.

101. Katherine was compelled into the conservatorship litigation through a petition for conservatorship and thereby became a party to that litigation.

102. Katherine had severe dementia that limited her ability to communicate and precluded her from advocating for herself.

103. Defendants, and each of them, and the court, all understood both that Katherine had dementia and that her dementia was a disability for her. Indeed, Katherine's disability formed a critical part of the basis for the petition for the conservatorship.

104. Katherine would have been able to meaningfully participate in the conservatorship litigation through appointment of competent counsel to zealously advocate for her both during and following the conservatorship trial.

105. Defendants, and each of them, conspired to deprive Katherine of her right to reasonable accommodation through appointment of competent legal counsel to zealously advocate for her, and the court did not provide Katherine with this legally mandated reasonable accommodation.

106. As a result of being denied a zealous advocate to represent her interests, Katherine was forced into a conservatorship against her will and in contravention of her advanced planning aimed at preventing such a forced conservatorship, including providing that all of her financial, physical and psychosocial needs would be fulfilled by placing her assets into the 2013 Dubro Family Trust with her children named as trustee and successor trustee, and executing a Durable Power of Attorney and Advanced Health Care Directive that each designated one of her children as the agent authorized to provide for all of Katherine's needs. Katherine absolutely wanted to avoid being placed into a conservatorship or an elder care facility.

107. Failure to provide the reasonable accommodation of legal representation for Katherine resulted in her not having a voice at the conservatorship trial, having her right to a jury trial improperly waived, forcing her into a conservatorship that she never wanted, rendered Katherine unable to appeal the extra jurisdictional conservatorship order, and caused her to suffer deprivation of rights, false imprisonment by being house bound and bed-bound, isolation from her family, drugging as a means of chemical restraint, deprivation of nutrition and being left to waste away without proper medical intervention, negligent care allowing an unsightly and unhealthy cyst to grow unchecked with an undiagnosed cancer that created an unconscionable risk of metastasis to other parts of Katherine's body, in addition to other physical, financial and psychosocial abuses.

108. As a result of these described ADA violations and the continuing ADA violation through failure to appoint a non-conflicted and zealous legal advocate to represent her, Plaintiff Katherine M. Dubro has suffered damages according to proof at time of trial.

FOURTH CAUSE OF ACTION

VIOLATION OF UNRUH CIVIL RIGHTS ACT – CAL. CIVIL CODE § 51 ET SEQ. DISCRIMINATION BASED ON DISABILITY

109. Paragraphs 1 through 108, inclusive, are incorporated by reference as though set forth fully in this cause of action.

110. Katherine was denied full and equal accommodations, advantages, facilities, privileges and/or services because of her dementia disability.

111. Defendants Kristen Boney, LAS, Mark Cederborg, Daniel Presher, Daniel Leahy, Peter Shelton, Leo Bautista, James Phillips, Katelyn Phillips, Douglas Housman, and Kellie Hayes denied, aided and/or incited a denial of Katherine's full and equal accommodations, advantages, facilities, privileges and/or services to Katherine, including but not necessarily limited to the conduct set forth in the Third Cause of Action above.

112. Defendants, and each of them, also took advantage of Katherine's dementia disability to assist their conspiracies to force Katherine into a private conservatorship against her will and to allow Defendants to profit thereby by claiming entitlement to fees.

113. Defendants' discriminatory conduct against Plaintiff Katherine M. Dubro forced her into a conservatorship against her will, in contravention of her advanced planning aimed at preventing such.

114. Denial of Katherine's rights to full and equal accommodations, advantages, facilities, privileges and/or services because of her dementia disability resulted in her not having a voice at the conservatorship trial, having her right to a jury trial improperly waived, forcing her into a conservatorship that she never wanted, rendered Katherine unable to appeal the extra jurisdictional conservatorship order, and caused her to suffer deprivation of rights, false imprisonment by being house bound and bed-bound, isolation from her family, drugging as a means of chemical restraint, deprivation of nutrition and being left to waste away without proper medical intervention, negligent care allowing an unsightly and unhealthy cyst to grow unchecked with an undiagnosed cancer that created an unconscionable risk of metastasis to other parts of Katherine's body, in addition to other physical, financial and psychosocial abuses.

115. Plaintiff Katherine M. Dubro is entitled to recover damages according to proof at trial.

FIFTH CAUSE OF ACTION

VIOLATION OF UNRUH CIVIL RIGHTS ACT – CAL. CIVIL CODE § 51 ET SEQ. DISCRIMINATION BASED ON MARITAL STATUS

116. Paragraphs 1 through 115, inclusive, are incorporated by reference as though set forth fully in this cause of action.

1 117. Plaintiffs Robert Dubro and Katherine M. Dubro were denied full and equal
2 accommodations, advantages, facilities, privileges and/or services because of Robert Dubro's marital
3 status as an unmarried adult and Katherine M. Dubro's association with her unmarried adult children.

4 118. Defendants Leo Bautista, Dr. Steven Curran, Jackie Monterrosa, Dennis Dubro, Daniel
5 Presher, Mark Cederborg, Daniel Leahy and Peter Shelton denied, aided and/or incited a denial of full
6 and equal accommodations, advantages, facilities, privileges and/or services to Plaintiffs including
7 through manufacture of false testimony evidence to deprive Plaintiffs Katherine M. Dubro and Robert
8 Dubro, and Michael Dubro of their right to reside in the same house and to associate with each other, in
9 addition to other rights, privileges, accommodations, advantages, facilities and/or services.

10 119. A substantial motivating reason for Defendants' and each of their conduct was the
11 unlawful discriminatory perception of Robert Dubro's unmarried status and Katherine M. Dubro's
12 association with him as her unmarried adult son.

13 120. As a result of Defendants' and each of their conduct, Plaintiff Robert Dubro was evicted
14 from his place of residence against the residence owner's, Katherine M. Dubro's, wishes and Plaintiffs
15 have been deprived the ability to provide and/or have constant care by and companionship with their
16 family members.

17 121. Defendants' and each of their conduct was a substantial factor in causing significant
18 physical, financial and psychosocial harms as discussed in the First through Fourth Causes of Action
19 above, and according to proof at time of trial.

20 122. Plaintiffs Katherine M. Dubro and Robert Dubro are entitled to recover damages
21 according to proof at time of trial.

22 **SIXTH CAUSE OF ACTION**

23 **FALSE IMPRISONMENT**

24 123. Paragraphs 1 through 122, inclusive, are incorporated by reference as though set forth
25 fully in this cause of action.

26 124. Plaintiff Katherine M. Dubro was wrongfully restrained, confined and/or detained by
27 Defendants, and each of them, by being improperly administered mood-altering and mind-altering drugs
28

as a form of chemical restraint, and being (i) house bound and often bed-bound, (ii) isolated from her family, (iii) denied outings and (iv) through other improper restrictions on her rights and freedoms.

125. Plaintiff Robert Dubro and Maureen Shroyer, Mary Jeanne Howard and Michael Dubro were restrained, confined and/or detained by Defendants, and each of them, by being denied on one or more occasions to have access to their mother's, Katherine's, house to visit her and through other unnecessary restrictions on their rights and freedoms.

126. Defendants, and each of them, participated in intentionally depriving Plaintiffs of their freedom of movement by use of physical barriers, chemical restraints, force, threats of force, menace, fraud, deceit, and/or unreasonable duress;

127. The restraint, confinement and/or detention compelled Plaintiffs to stay or go somewhere for appreciable amounts of time, including Plaintiff Katherine M. Dubro being confined to her house (for days, months and years) and/or bed (for hours or days) and Plaintiff Robert Dubro and Maureen Shroyer, Mary Jeanne Howard and Michael Dubro confined to the outside patio during visits and otherwise restrained from entering the house where Plaintiff Katherine M. Dubro was being confined.

128. Plaintiffs did not voluntarily consent to these constraints on their freedom of movement. Plaintiffs, and each of them, were actually harmed physically, psychosocially and/or financially by the false imprisonment(s).

129. Defendants', and each of their, participatory conduct in creating the false imprisonment were/was a substantial factor in causing the harms to Plaintiffs.

130. Plaintiffs are entitled to recover damages according to proof at time of trial.

SEVENTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTIES

131. Paragraphs 1 through 130, inclusive, are incorporated by reference as though set forth fully in this cause of action.

132. Defendants Kristen Boney, Legal Assistance for Seniors ("LAS") and George McNitt owed fiduciary duties to Plaintiff Katherine M. Dubro as her appointed attorneys.

133. Defendants Leo Bautista, Kellie Hayes, and Daniel Leahy owed fiduciary duties to Katherine M. Dubro as appointed conservators and/or interim trustees for her 2013 Dubro Family Trust.

1 134. Defendants Leo Bautista, Kellie Hayes, and Daniel Leahy similarly owed fiduciary duties
2 to Plaintiff Robert Dubro and to Michael Dubro, Maureen Shroyer and Mary Jeanne Howard who are
3 Plaintiff Katherine M. Dubro's children and successor beneficiaries of her 2013 Dubro Family Trust.

4 135. Defendant Mark Cederborg owed fiduciary duties to Katherine M. Dubro as her limited
5 scope guardian ad litem and by holding himself out as a general scope guardian ad litem for both the
6 conservatorship and for the trust matter without actual or proper appointment.

7 136. Defendants Emilie S. (Joann) Bautista and Jackie Monterrosa owed fiduciary duties to
8 Plaintiff Katherine M. Dubro by holding themselves out as conservators for the person and estate of
9 Katherine M. Dubro.

10 137. Defendants Dr. Michelle Dhanak, ElderConsult Geriatric Medicine, Sharon Baldoza,
11 Vitas Hospice, Ace Home Health and Hospice, L and C Care Providers, Inc., LivHOME Inc. and DOES
12 1-25 owed fiduciary duties to Katherine M. Dubro as medical care providers/home care providers.

13 138. Defendants, and each of them, who owed fiduciary duties to one or more Plaintiff,
14 breached those fiduciary duties by not acting with the utmost good faith in the best interests of the
15 Plaintiff or Plaintiffs to whom the fiduciary duties were owed and/or failed to act as a reasonably careful
16 fiduciary would have acted under the same or similar circumstances.

17 139. Defendants Daniel Presher, James Phillips, Katelyn Phillips, Douglas Housman and Peter
18 Shelton knew about the other Defendants' fiduciary duties owed to Plaintiffs and provided substantial
19 assistance or encouragement to the other Defendants (civil aiding and abetting) to breach their fiduciary
20 duties owed to Plaintiffs.

21 140. Defendants, and each of them, knew about the other Defendants' fiduciary duties owed to
22 Plaintiffs and provided substantial assistance or encouragement to one or more Defendant(s) (civil
23 aiding and abetting) to breach their fiduciary duties owed to Plaintiffs.

24 141. By breaching and/or assisting or encouraging others to breach fiduciary duties owed to
25 Plaintiff Katherine M. Dubro and/or to each Plaintiff, Defendants and each of them caused or allowed all
26 of the deprivation of rights, violations of federal rights, discrimination, false imprisonment, elder abuse
27 and consequent physical, psychosocial and financial harms set forth in Causes of Action One through
28 Six, Eight and Nine.

1 142. Each Defendant's conduct was a substantial factor in causing the harms to each Plaintiff.

2 143. Each Plaintiff suffered damages according to proof at time of trial.

3 **EIGHTH CAUSE OF ACTION**

4 **ELDER ABUSE – CAL. WELF. & INST. CODE § 15610.07(a)**
5 **Physical Abuse, Neglect, Financial Abuse, Abandonment and/or Isolation**

6 144. Paragraphs 1 through 143, inclusive are incorporated by reference as though set forth
7 fully in this cause of action.

8 145. Defendants Leo Bautista, Emile S. (Joann) Bautista, Jackie Monterrosa, Kellie Hayes, L
9 and C Care Providers, Inc., LivHOME Inc. and DOES 1-25 had a substantial caretaking or custodial
10 relationship with Plaintiff Katherine M. Dubro involving ongoing responsibility for her basic needs,
11 which an able-bodied and fully competent adult would ordinarily be capable of managing without
12 assistance.

13 146. Plaintiff Katherine M. Dubro was 89 to 93 years old while she was in these Defendants'
14 care or custody.

15 147. Each of these Defendants failed to use the degree of care that a reasonable person in their
16 same situation would have used in providing for Katherine's basic needs, including (i) preventing
17 malnutrition or dehydration, (ii) avoiding unnecessary use of powerful mood-altering and mind-altering
18 drugs as a chemical restraint, (iii) addressing the unchecked growth of an unsightly cyst that should have
19 been removed, (iv) diagnosing a cancer that was allowed to grow unchecked to a size that created a
20 substantial, unnecessary risk of metastasis, (v) providing physical activity, (vi) allowing her use of
21 restroom facilities instead of being forced to use diapers, (vii) not isolating her from her family, (viii)
22 allowing her to go on outings or excursions, (ix) allowing her to have visits with family members, and
23 (x) protection of her rights, providing for her physical needs and psychosocial development, and
24 allowing for her to live in the least restrictive means possible.

25 148. Each of these Defendants also took, hid, appropriated, obtained or retained and/or
26 assisted in taking, hiding, appropriating, obtaining or retaining Plaintiff Katherine M. Dubro's property
27 for a wrongful use or with the intent to defraud or by undue influence.
28

149. Each of these Defendants, through their conspiracy, engaged in fraud through an intentional misrepresentation, deceit, or concealment of a material fact with the intention of depriving Plaintiff Katherine M. Dubro of her rights and/or property or otherwise to cause Plaintiff injury.

150. Defendants', and each of their, conduct caused Plaintiff to suffer harms, including deprivation of her rights, false imprisonment by being house bound and bed-bound, isolation from her family, drugging as a means of chemical restraint, deprivation of nutrition and being left to waste away without proper medical intervention, negligent care allowing an unsightly and unhealthy cyst to grow unchecked with an undiagnosed cancer that created an unconscionable risk of metastasis to other parts of Katherine's body, in addition to other physical, financial and psychosocial abuses.

151. Each Defendants' conduct was a substantial factor in causing Plaintiff's harms.

152. Plaintiff suffered damages according to proof at time of trial.

NINTH CAUSE OF ACTION

ELDER ABUSE – CAL. WELF. & INST. CODE § 15610.07(b) Care Provider's Deprivation of Goods and/or Services Necessary to Avoid Harm

153. Paragraphs 1 through 152, inclusive, are incorporated by reference as though set forth fully in this cause of action.

154. Defendants Leo Bautista, Emelie S. (Joann) Bautista, Jackie Monterroso, Kellie Hayes, Dr. Michelle Dhanak, ElderConsult Geriatric Medicine, Sharon Baldoza, Vitas Hospice, Ace Home Health and Hospice, L and C Care Providers, Inc., LivHOME Inc. and DOES 1-25 acted with recklessness, oppression, fraud and/or malice in neglecting Plaintiff Katherine M. Dubro.

155. These Defendants, and each of them, were grossly negligent as they knew it was highly probable that their conduct would cause harm and knowingly disregarded this risk.

156. These Defendants', and each of their, conduct was despicable and/or was done with a willful and knowing disregard of the rights or safety of another.

157. These Defendants, and each of them, was/were aware of the probable dangerous consequences of their conduct, including that Plaintiff Katherine M. Dubro was being left to waste away through lack of proper nutrition/hydration and was likely to suffer harm including possible premature death, and deliberately failed to take actions to avoid those consequences.

1 158. These Defendants', and each of their, conduct was so vile, base, or contemptible that it
2 would be looked down on and despised by reasonable people.

3 159. These Defendants', and each of their, conduct was despicable and subjected Katherine to
4 cruel and unjust hardship in knowing disregard of her rights.

5 160. Each Defendant's conduct was a substantial factor in causing Plaintiff Katherine M.
6 Dubro's harms or injuries.

7 161. Plaintiff suffered damages according to proof at time of trial.¹

8 **TENTH CAUSE OF ACTION**
9 **PROFESSIONAL NEGLIGENCE**

10 162. Paragraphs 1 through 161, inclusive, are incorporated by reference as though set forth
11 fully in this cause of action.

12 163. Katherine was harmed by the professional negligence, including by way of fraudulent
13 conspiracy, of Defendants Leo Bautista, Joann Bautista, Jackie Monterrosa, Kellie Hayes, L and C Care
14 Providers, Inc., LivHOME Inc., Kristen Boney, LAS, Mark Cederborg, and George McNitt.

15 164. Each of these Defendants was negligent in providing professional services as a fiduciary
16 (Defendants Leo Bautista, Emile S. (Joann) Bautista – holding herself out as conservator, Jackie
17 Monterrosa – holding herself out as conservator, and Kellie Hayes), as professional care providers (L
18 and C Care Providers, Inc., LivHOME Inc.), as a medical professional (Dr. Michelle Dhanak,
19 ElderConsult Geriatric Medicine, Sharon Baldoza, Vitas Hospice, Ace Home Health and Hospice, and
20 Dr. Steven Curran), or as an attorney (Kristen Boney, LAS, George McNitt, Mark Cederborg).

21 165. Plaintiff Katherine M. Dubro was harmed as a result of these Defendants', and each of
22 their, professional negligence resulting in deprivation of her rights, false imprisonment by being house
23 bound and bed-bound, isolation from her family, drugging as a means of chemical restraint, improper
24 placement on hospice care for almost twenty (20) months, deprivation of nutrition and being left to
25 waste away without proper nutrition and/or medical intervention, negligent care allowing an unsightly
26 and unhealthy cyst to grow unchecked with undiagnosed cancer that created substantial risk of
27

28 ¹ There is no 90-day prelawsuit notification requirement for elder abuse claims based on these medical care
Defendants', and each of their, grossly negligent conduct as set forth herein.

1 metastasis to other parts of Katherine's body, improperly taking over her 2013 Dubro Family Trust in
2 violation of the expressly designated trustee provisions designating two of her children as trustee and
3 successor trustee and then siphoning off in excess of Two Million Dollars (\$2,000,000) of trust value
4 while refusing to provide complete accountings, and other physical, financial and psychosocial abuses.

5 166. These Defendants', and each of their, professional negligence was a substantial factor in
6 causing Plaintiff Katherine M. Dubro's harm.

7 167. Plaintiff suffered damages as a result of each defendant's professional negligence
8 according to proof at time of trial.

9 **ELEVENTH CAUSE OF ACTION**

10 **NEGLIGENCE**

11 168. Paragraphs 1 through 167, inclusive, are incorporated by reference as though set forth
12 fully in this cause of action.

13 169. Plaintiff Katherine M. Dubro was harmed by the negligence of each Defendant, including
14 Defendants DOES 1 through 25.

15 170. Each Defendant was negligent in providing goods or services to Katherine M. Dubro.

16 171. Plaintiff Katherine M. Dubro was harmed as a result of these Defendants', and each of
17 their, negligence resulting in deprivation of her rights, false imprisonment by being house bound and
18 bed-bound, isolation from her family, drugging as a means of chemical restraint, deprivation of nutrition
19 and being left to waste away without proper medical intervention, negligent care allowing an unsightly
20 and unhealthy cyst to grow unchecked with an undiagnosed cancer that created an unconscionable risk
21 of metastasis to other parts of Katherine's body, in addition to other abuses.

22 172. These Defendants', and each of their, negligence was a substantial factor in causing
23 Plaintiff Katherine M. Dubro's harm.

24 173. Plaintiffs suffered damages according to proof at time of trial.

25 **TWELFTH CAUSE OF ACTION**

26 **DECLARATORY RELIEF**

27 174. Paragraphs 1 through 173, inclusive, are incorporated by reference as though set forth
28 fully in this cause of action.

1 175. Plaintiff Katherine M. Dubro seeks a declaratory judgment from the court that the
2 Alameda County Superior Court, Probate Division, participated in or knowingly allowed violations of
3 Plaintiff Katherine M. Dubro's rights by:

4 (a) failing to comply with the jurisdictional prerequisites mandated by Probate Code section
5 1825 before forcing an incapacitated person into a conservatorship against their wishes;

6 (b) refusing to provide her with counsel to act as a zealous advocate for her during and after the
7 conservatorship trial, as required through proper compliance with the Americans with Disabilities Act;

8 (c) allowing all of the further abuses set forth in Paragraphs 1 through 172 above, and/or

9 (d) speculating that the only way to seek redress would have been through an appeal of the
10 conservatorship order even though such an appeal was impossible for Plaintiff Katherine M. Dubro,
11 since she has dementia and was denied appointment of legal counsel to zealously advocate for her rights.

12 176. Plaintiff Katherine M. Dubro further seeks a declaratory judgment requiring the
13 following changes in policies and practices to prevent these abuses from happening to others:

14 (a) Strict adherence with the mandates of Probate Code section 1825 in conformance with the
15 recent appellate court ruling in *Conservatorship of A.E.* (2020) 45 Cal. App. 5th 277;

16 (b) Procedure to require rescission of conservatorship orders issued without compliance with
17 Section 1825, to be effected immediately upon written request showing the failure to comply with
18 Section 1825; and

19 (c) Mandate assignment of independent legal counsel to zealously advocate for incapacitated
20 litigants, including but not limited to conservatees (proposed and conserved) or others alleged to lack
21 legal capacity.

22 **VI. PRAYER FOR RELIEF**

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

24 (1) Declaratory Relief according to the request in the Twelfth Cause of Action;

25 (2) Economic damages for all losses incurred, including but not necessarily limited to
26 compensatory and consequential damages;

27 (3) Non-economic damages for pain and suffering, humiliation, loss of companionship, anxiety,
28 shame, depression, worry, shock, and indignity;

- 1 (4) Statutory damages;
- 2 (5) Punitive damages for all causes of action that provide for recovery of punitive damages;
- 3 (6) Disgorgement of fees;
- 4 (7) Pre- and post-judgment interest;
- 5 (8) Attorneys' fees and costs;
- 6 (9) Complete accountings for Plaintiff Katherine M. Dubro's 2013 Dubro Family Trust going
- 7 back three years from the time of filing this Complaint; and
- 8 (10) Other relief allowed under principles of law or equity as the court deems just and proper.
- 9

10 Dated: November 19, 2020

Respectfully submitted,

11 By: 
12 EVAN C. NELSON

13

14

15 **VII. DEMAND FOR JURY TRIAL**

16 Plaintiffs hereby make demand for a jury trial as guaranteed by the California Constitution,

17 Article 1, Section 16.

18

19 Dated: November 19, 2020

Respectfully submitted,

20 By: 
21 EVAN C. NELSON

22

23

24

25

26

27

28