

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-CV-923-WJM-KLM

DON BENNETT

Plaintiff,

v.

SSC PALISADE OPERATING COMPANY, LLC, a Delaware Limited
Liability Company;

Defendant.

**DEFENDANT SSC PALISADE OPERATING COMPANY, LLC'S
RESPONSE TO PLAINTIFF'S FIRST SET OF DISCOVERY REQUESTS**

SSC Palisade Operating Company, LLC ("Palisades"), through its counsel
Gordon & Rees LLP, responds to Plaintiff's First Set of Discovery Requests as follows:

PRELIMINARY STATEMENT

1. Palisades' investigation and development of all facts and circumstances relating to this case are ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Palisades' right to rely on other facts or documents at the time of any hearing, trial, settlement or any form of alternate dispute resolution.

2. By making the accompanying responses and objections to Plaintiff's interrogatories, Palisades does not waive, and expressly reserves, its rights to assert any and all objections as to the admissibility of the responses into evidence in this case, or in any other proceeding. Further, Palisades makes its responses and objections without implying that it considers the interrogatories to be relevant or material to this case.

3. Palisades expressly reserves the right to supplement, clarify, revise or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplement response(s).

4. Palisades reserves the right at the time of trial or in other proceedings in this case to rely upon documents and evidence in addition to those provided in responsive document requests regardless of whether any such documents in evidence are newly discovered or currently in existence.

GENERAL OBJECTIONS AND DENIALS

1. Palisades generally objects to Plaintiff's interrogatories to the extent that they seek information protected by the attorney-client privilege; the attorney work product doctrine; the psychotherapist-patient privilege, as interpreted by the courts; the physician-patient privilege; the nurse-patient privilege; the accountant-client privilege, as codified at C.R.S. § 13-90-107; the Colorado Quality Management statute, as codified at C.R.S. § 25-3-109; the common law self-evaluative privilege; the common law self-critical analysis privilege; the federal quality assurance privilege codified at 42 U.S.C. §§ 1395i-3(b)(1)(B) and 1396r(b)(1)(B); corporate or other records subject to a privacy or confidentiality right; documents prepared in anticipation of litigation or trial; documents containing information made confidential by the federal Health Insurance Portability and Accountability Act ("HIPAA"); and any other applicable constitutional, statutory, or common law privilege recognized by law.

2. It is Palisades' intent to assert all applicable privileges and exemptions from discovery and otherwise fully protect privileged or exempt information. Any

disclosure of privileged or exempt information is inadvertent, involuntary, and unintentional, and is not intended to be a waiver of any privileges or exemptions.

3. Investigation as to the matters that are the subject of Plaintiff's interrogatories is continuing and therefore its responses may not be exhaustive. Palisades reserves its right to revise, correct, supplement, or clarify any responses or objections to the Plaintiff's interrogatories; to recall any inadvertent responses to which privilege is attached or an objection has been lodged; and to introduce at the time of hearing, trial, settlement, or other form of alternate dispute resolution any additional information or documents of which Palisades becomes aware as a result of continuing investigation or discovery.

4. Palisades objects to Plaintiff's interrogatories to the extent they seek information that exists in the plaintiff's own records, is in the custody of the plaintiff, and/or is cumulative or duplicative.

5. Palisades objects to Plaintiff's interrogatories to the extent that they seek information that violates privacy rights or confidentiality agreements, reveals trade secrets or other proprietary information, or otherwise violates any arrangements between Palisades and any entity or individual not a party to this lawsuit.

6. Palisades objects to each interrogatory to the extent it calls for speculation, conjecture, opinion, expert opinion, or a legal conclusion.

7. Palisades objects to providing information relating to non-parties to this lawsuit, as well as any information that violates the privacy or confidentiality rights of non-parties to this lawsuit.

8. Palisades objects to Plaintiff's interrogatories to the extent that they are compound and do not constitute a single request for admission.

9. Each and every response to any of the following inquiries set forth in the Plaintiff's requests includes the general objections and denials. Additional specific objections made in response to a particular request do not limit the general objections.

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 1:

Please state the names, addresses, phone numbers, job position and current employee status with Defendant of the person(s) who spoke to Sue Matthews, EMT/Paramedic on 6/17/2013 and who is quoted (see Complaint paragraph 38) as stating that the 6/17/2013 "fall was not witnessed", that it was "not known how long she was down", that she "was in the wheelchair and later found on the floor" and that there was "a possibility she may have fallen from a standing position." Please also be sure to explain the bases for these statements and produce any documents that support or in any way related to or discuss these reportedly made statements to the paramedics by the staff person(s) you identify as talking to Sue Matthews or any other paramedics or EMT personnel on 6/17/2013.

RESPONSE TO INTERROGATORY NO. 1:

Palisades objects to Interrogatory No. 1 as compound and as impermissibly constituting two separate interrogatories under Fed.R.Civ.P 33(a)(1) and a request for production under Fed.R.Civ.P. 34. Palisades further objects on the grounds that Interrogatory No. 1 assumes a fact (that EMT Sue Matthews was quoting a member of Palisades' staff in her report of the incident) not admitted by Palisades or otherwise properly established. Palisades also objects to the extent that Interrogatory No. 1 calls for information protected by the quality assurance privilege including information protected by the privileges codified at C.R.S. § 25-3-109, 42 U.S.C. § 1395i-3(b)(1)(B), and 42

U.S.C. § 1396r(b)(1)(B) and the common law self-evaluative privilege and self-critical analysis privilege. *See, e.g., Bredice v. Doctors Hospital, Inc.*, 50 F.R.D. 249 (D.D.C. 1970). Palisades also objects to Interrogatory No. 1 to the extent that it calls for speculation by seeking information outside of the personal knowledge of Palisades' employees when it asks Palisades to explain the basis for statements its employees did not make, in a report they did not write. *Deutsche Bank Nat'l Trust Co. v. Miller*, 2012 Bankr. LEXIS 3461, 56, 2012 WL 2953111 (Bankr. D. Colo. July 18, 2012) (sustaining an objection to an interrogatory calling for information about the conduct of third parties as impermissibly speculative).

Nevertheless, without waiving or in any way limiting any of these objections, and in an effort to avoid the need for Plaintiff to prepare additional discovery requests, Palisades states that it has investigated the subject matter of this interrogatory but has not identified any person who is quoted in Sue Matthew's report of the incident as stating that "the 'fall was not witnessed', [sic] that it was 'not known how long she was down', [sic] that she 'was in the wheelchair and later found on the floor' and that there was a possibility she may have fallen from a standing position.'" Palisades is not aware of any staff who were present for the communications with the paramedics after the incident and who recall anyone telling the paramedics that no one from the facility witnessed Ms. Bennett's fall, or that no one from the facility knew how long Ms. Bennett had been down on the ground after the fall. Furthermore, Palisades understands that none of the individuals present for these communications believe the staff was trying to "cover up" the fact that the fall was witnessed and some staff knew approximately when it occurred.

Palisades further states that, to the best of its knowledge, the following employees were present for some of the communications with the paramedics after the incident:

NAME	ADDRESS	PHONE	POSITION	STATUS
Elizabeth Landon	P.O. Box 725, Clifton, CO 81520	(970) 355-4982	RCS	Former employee
Kaitlyn Wiman	C/O Gordon & Rees LLP	(303) 200-6896	RCS	Current employee
Louise Gullikson	2663 Eagle Ridge Drive, GJ, CO 81503	(970) 623-3773	Unit Nurse	Former employee
Amanda Slogar	3096 Silver Court, GJ, CO 81504	(970) 216-8361	Unit Nurse	Former employee
Malinda Cyphers	C/O Gordon & Rees LLP	(303) 200-6896	RCS	Current employee

INTERROGATORY NO. 2:

State the names, addresses, phone numbers and current employee status with Defendant of the 5 persons you believe have the most knowledge about the facts related to the 6/17/2013 fall of Mrs. Bennett complained of in this lawsuit and the statements related thereto contained in the IDT quoted in paragraphs 34 and 35 of the Complaint together with any incident or accident report(s) related to this fall event and describe in reasonable detail the knowledge each of these persons has about this event.

RESPONSE TO INTERROGATORY NO. 2:

Palisades objects to Interrogatory No. 2 as compound and as impermissibly constituting two separate interrogatories under Fed.R.Civ.P 33(a)(1). Palisades further objects to Interrogatory No. 2 to the extent that it calls for speculation by seeking Palisades' belief regarding which of its current and former employees have the most knowledge of the fall, the IDT Post Fall Review report, and the incident report without providing criteria to weigh which facts and which of these topics are most important. Palisades also objects to this interrogatory to the extent that it calls for attorney work product. And Palisades objects to the extent that the Paragraphs of the Amended Complaint referenced in the interrogatory do not quote sections of the IDT report as the interrogatory purports. Additionally, to the extent that this interrogatory calls for information from an incident report and reports of other internal investigations, Palisades

objects to production of information protected by the quality assurance privilege including information protected by the privileges codified at C.R.S. § 25-3-109, 42 U.S.C. § 1395i-3(b)(1)(B), and 42 U.S.C. § 1396r(b)(1)(B) and the common law self-evaluative privilege and self-critical analysis privilege. *See, e.g., Bredice v. Doctors Hospital, Inc.*, 50 F.R.D. 249 (D.D.C. 1970). Finally, to the extent that Interrogatory No. 2 calls for Palisades to interview individuals who may have knowledge of the incident (some of whom are former employees and a number of whom are currently scheduled to be deposed by Plaintiff's counsel) and to describe the information gained in those interviews, this interrogatory improperly calls for Palisades to generate information that may not be in its possession, custody, or control and to produce information that is equally available to both parties.

Nevertheless, without waiving or in any way limiting any of these objections, and in an effort to avoid the need for Plaintiff to prepare additional discovery requests, Palisades states that the following employees were working at the time of the incident or were involved in the review and investigation of the incident:

NAME	ADDRESS	PHONE	POSITION	STATUS
Elizabeth Landon	P.O. Box 725, Clifton, CO 81520	(970) 355-4982	RCS	Former employee
Kaitlyn Wiman	C/O Gordon & Rees LLP	(303) 200-6896	RCS	Current employee
Louise Gullikson	2663 Eagle Ridge Drive, GJ, CO 81503	(970) 623-3773	Unit Nurse	Former employee
Amanda Slogar	3096 Silver Court, GJ, CO 81504	(970) 216-8361	Unit Nurse	Former employee
Malinda Cyphers	C/O Gordon & Rees LLP	(303) 200-6896	RCS	Current employee
Katherine Johnston	2828 Orchard Ave., Unit # 34, GJ 81501	(970) 721-2765	RCS	Former employee
Snow Losh	647 35 ½ Road, Palisade, CO 81526	(970) 464-4884	RCS	Former employee
Shelly Strahan	3171 Sheyl Ct., GJ, CO 81503	(970) 210-9604	RCS	Former employee
Kelly Bautista	2983 Yew Leaf Willow Ave, GJ 81504	(970) 260-0866	Unit Nurse	Former employee

Vincent Langella	820 Iowa Ave., Palisade , CO 81526	(970) 464-7628	RCS	Former employee
Dennis Tofano	4305 S. Poplar St., Casper, WY 82601	(307) 259-4155	NHA	Former employee
Danielle Aravanis	2911 Junction St., Durango, CO 81301	(720) 935-1470	DON	Former employee
Teresa Spears	2110 Yosemite Road, GJ, CO 81570	(970) 263-8713	ADON	Former employee
Heather Dillon	34647 Moran Trail, Elizabeth, CO 80107	(303) 646-0752	SDC	Former employee
Kim Garrett	3245 White Ave. #1, Clifton, CO 81520	(970) 589-5143	AD	Former employee

Palisades further states that Louise Gullikson, Elizabeth Landon, Katherine Johnston, and Kaitlyn Wiman were present for communications between them about who would watch Ms. Bennett while she was at the north nurse's station waiting to shower. Louise Gullikson, Elizabeth Landon, Katherine Johnston, and Kaitlyn Wiman either observed Ms. Bennett fall or observed her shortly after she fell. Louise Gullikson, Elizabeth Landon, Katherine Johnston, Kaitlyn Wiman, Amanda Slogar, and Malinda Cypers assessed Ms. Bennett for injuries and/or provided care and comfort to her after the fall. Louise Gullikson, Elizabeth Landon, Kaitlyn Wiman, Amanda Slogar and Malinda Cypers were present for portions of the communications with the paramedics. Louise Gullikson, Elizabeth Landon, Amanda Slogar, Danielle Aravanis, and Dennis Tofano were involved in parts of the investigation. Danielle Aravanis, Heather Dillon, Teresa Spears, Kim Garrett, and Amanda Slogar were involved in the IDT post fall review.

For further descriptions of knowledge the individuals in the chart above have about the incident, the information known to Palisades may be determined from Palisades chart for Ms. Bennett. Per Fed.R.Civ.P. 33(d), Palisades directs Plaintiff to the following portions of the chart to determine the information sought:

- Bennett 1717 – 1718;
- Bennett 1697 – 1698;
- Bennett 1404 – 1406;

- Bennett 413.

INTERROGATORY NO. 3:

Please describe how Mrs. Bennett was dressed at the time she was left at the north nurses station and at the time of her fall on 6/17/2013.

RESPONSE TO INTERROGATORY NO. 3

Palisades understands Ms. Bennett was wearing *inter alia* a long sleeve t-shirt, pajama pants, briefs, and non-slip footwear when she was at the north nurse's station waiting for the shower the evening of June 17, 2013, at the time of the fall, and until she was transported to St. Mary's Hospital when she was transferred out of Palisades' care.

RESPONSE TO REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please **produce** the personnel files of agents and or employees of Defendants involved in Mrs. Bennett's complained of fall injury, including, but not limited to, records or documents in any way discussing or involving termination or discipline or other facility action taken with respect to any involved employees and/or the reasons for the same. These employees include, but are not limited to, the **two involved CNAs** mentioned in the IDT and the Complaint, **the involved nurse** at the north station mentioned in the IDT and in the Complaint by whom Mrs. Bennett was to be watched **and any staff who talked to Sue Matthews** as reported by her in the report quoted in the complaint in paragraph 38. This request includes any reports to licensing boards like the Nursing Board for the State of Colorado or any other DORA agencies or divisions.

RESPONSE TO REQUEST NO. 1:

Palisades objects to Request No. 1 to the extent that the term "involved" is vague and ambiguous and potentially overly broad and unduly burdensome. Palisades also objects to this request to the extent that it seeks the complete personnel file in each instance and is thus "facially overbroad" and impermissible. *Bottoms v. Liberty Life*

Assur. Co., 2011 U.S. Dist. Lexis 143251, 14 2011 WL 618423 (D. Colo. Dec. 13, 2011) (holding that a request for production of “complete personnel files” was “facially” and “strikingly” overbroad). Palisades further objects to the production of personnel files on the basis that they are subject to each respective staff member’s constitutional rights to privacy and confidentiality as recognized in *Martinelli v. District Court of Denver*, 612 P.2d 1083, 1089 (Colo. 1980), and its progeny and Plaintiff has not demonstrated that he has a compelling need for the files themselves or that production of the personnel files is the least intrusive means to obtain the information he seeks. Both Colorado and the Tenth Circuit have adopted *Martinelli* as the test to govern discovery of personnel files. *Id.*; *Martin v. Wegener*, 2014 U.S. Dist. LEXIS 21320, 3 (D. Colo. Feb. 20, 2014) (“[T]he Tenth Circuit adopted the *Martinelli* test for determining whether information contained in personnel files is of such a highly personal or sensitive nature that it falls within the zone of constitutionally recognized confidentiality.”) The information in the personnel files can be sought in a less intrusive manner through either or both more targeted discovery or depositions. *Bottoms*, 2011 U.S. Dist. Lexis 143251 at 14 (citing with approval a 9th Circuit case for the proposition relevant information contained in personnel files should be developed by interrogatories where possible rather than producing the files). Notably, a number of the individuals whose personnel files are subject to this request are scheduled to be deposed or are included on Plaintiff’s list of deponents in the June 26, 2014 Scheduling Order. Palisades further objects to this request to the extent that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence as much of the personnel files contain financial information, tax information, outdated contact information, and copies of facility policies

acknowledged by the employee for dress code, drug use, and other topics that are simply irrelevant to this case. Finally, Palisades objects to this request to the extent that it seeks public available information, such as reports to any state agency regulated by the Department of Regulatory Agencies, that is equally available to both parties.

The parties conferred on the scope of Request for Production No. 1 on July 10, 2014 at which time Plaintiff's counsel agreed to limit the scope of this request to (1) all documents that address termination of employment, facility discipline, or other facility action prior to or arising out of the incident in the personnel files of the three employees whose care was directly at issue in the incident (Elizabeth Landon, Katherine Johnston, and Louise Gullikson); and (2) all documents that address termination of employment, facility discipline, or other facility action arising out of the representations made by staff to any of the paramedics who responded to the incident in the personnel files of those present for any such communications (Louise Gullikson, Elizabeth Landon, Kaitlyn Wiman, Amanda Slogar and Malinda Cypers).

In response to this reduced scope, Palisades maintains its objections. Even with the narrower scope Plaintiff has proposed, the request still calls for records that are subject to the privacy rights of Palisades' current and former employees. Palisades has attempted on numerous occasions and through numerous means of communication to contact the current and former employee(s) whose personnel file(s) is/are subject to this request to discuss with the employee(s) whether the employee(s) would like to assert a privacy right(s) and resist production of the requested part of the personnel file(s). Palisades has been unable to reach the employee(s) for comment. Palisades will continue

its efforts to contact the employee(s) and, if necessary, it will update its response to this request once it has had an opportunity to discuss the issue with the employee(s).

REQUEST FOR PRODUCTION NO. 2:

Produce all internal investigation, incident, accident and occurrence reports concerning Mrs. Bennett during her stay at your facility. This includes all records pertaining to all falls by Mrs. Bennett while in your facility at any time.

RESPONSE TO REQUEST NO. 2:

Palisades objects to this request on the grounds that its reports of internal investigations of incidents, accidents, and occurrences are subject to the quality assurance privilege including the privileges codified at C.R.S. § 25-3-109, 42 U.S.C. § 1395i-3(b)(1)(B), and 42 U.S.C. § 1396r(b)(1)(B) and the common law self-evaluative privilege and self-critical analysis privilege. *See, e.g., Bredice v. Doctors Hospital, Inc.*, 50 F.R.D. 249 (D.D.C. 1970). Palisades further objects to this request as overly broad and unduly burdensome as Palisades organizes its incident reports chronologically (not by resident) and only keeps reports from the current calendar year on site so this request calls for Palisades to review every incident report generated by the facility over a five year period with almost all of those reports in storage. Palisades also objects to this request as seeking information not reasonably likely to lead to the discovery of admissible evidence to the extent that the request seeks incident reports for non-falls and incident reports for falls not at issue in this case.

REQUEST FOR PRODUCTION NO. 3:

Produce photos or videos of the type of hipster padded brief, the type of “hard sole shoes with/soft upper” Mrs. Bennett was to wear daily, the type of “lap buddy” typically used on the wheelchair for Mrs. Bennett, the type of wheelchair on which such lap buddy was typically used with Mrs. Bennett, the type of pressure alarms that Mrs. Bennett was supposed to have when seated at all times because of her dementia and

high fall risk and of the exact chair she was in at the time Mrs. Bennett was taken to the north nursing station near the shower on 6/17/13 and any lap buddy which fit such chair.

RESPONSE TO REQUEST NO. 3:

Palisades objects on the grounds that Request for Production No. 3 assumes facts (that the items listed were fall interventions, that those interventions were to be in place at the time of the incident, and that the pressure alarm and lap buddy should have been added to the shower chair) not admitted by Palisades or otherwise properly established. Palisades further objects to this request to the extent that it calls for Palisades to create new photographs that do not already exist in its files and therefore impermissibly calls for Palisades to produce documents, data, or tangible things not in its possession, custody, or control in violation of Fed.R.Civ.P. 34(a)(1).

Subject to and without waiving these objections and without limitation:

See Bennett 2958 – 2974.

REQUEST FOR PRODUCTION NO. 4:

Please **produce** all 24-hour reports or shift reports, doctor notifications or check notes or other daily, weekly or monthly records and **any other documents** not contained in the previously disclosed facility records. This includes all records of falls by her for falls at any time at the facility or to her fall risk and fall care planning needs at any time during her stay as well as including all CareTracker records pertaining to Mrs. Bennett.

RESPONSE TO REQUEST NO. 4:

Palisades objects to this request on the grounds that its 24-hour reports are subject to the quality assurance privilege including the privileges codified at C.R.S. § 25-3-109, 42 U.S.C. § 1395i-3(b)(1)(B), and 42 U.S.C. § 1396r(b)(1)(B) and the common law self-evaluative privilege and self-critical analysis privilege. *See, e.g., Bredice v. Doctors Hospital, Inc.*, 50 F.R.D. 249 (D.D.C. 1970). Palisades further objects to this request as overly broad and unduly burdensome to the extent that, in asking for Palisades to “produce . . . any other document not contained in the previously disclosed facility

records,” it literally seeks every document in Palisades possession, custody, or control other than what has already been produced in this case, without limitation to date/time, resident, or subject matter. Palisades also objects to this request to the extent that it calls for the facilities’ medical records for other residents and thereby calls for information protected by physician-patient privilege. Palisades also objects to this request as seeking information not reasonably likely to lead to the discovery of admissible evidence to the extent that it seeks information totally unrelated to the care provided Ms. Bennett.

Subject to and without waiving these objections and without limitation: Palisades is producing its CareTracker records for Ms. Bennett at Bennett 2975 – 3405. Disregarding the overly broad and unduly burdensome “any other document” portion of this request, Palisades is not aware of any other responsive documents at this time but will supplement if it becomes aware of any.

REQUEST FOR PRODUCTION NO. 5:

Please **produce** for the period of Mrs. Bennett’s stay, all fall safety procedures, protocols or other training documents employed by the Defendant nursing home relevant to issues in this case including but by no means limited to such documents regarding accident prevention, fall care planning, fall safety procedures, protocols or training of staff regarding falls, fall precautions, available fall prevention and mitigation equipment to prevent falls or mitigate harm from falls, care planning and resident assessment generally, revision of care plans based on changes in patient condition, admission and retention of patients whose needs the facility cannot meet within the services and resources and staffing it offers, care, treatment and protection of dementia patients, the special needs of dementia patients, the inability of dementia patients to protect or attend to their own safety, follow or remember instructions or use call lights, regarding accuracy and truthfulness by staff in record keeping and reporting of events happening at the facility to outside care givers like EMTs, paramedics or doctors, accident and incident reports, internal investigations, accident reporting and all standing orders on any of these

listed topics.

RESPONSE TO REQUEST NO. 5:

Palisades objects to Request No. 5 as compound and as impermissibly constituting at least five separate requests for production under Fed.R.Civ.P 34. Palisades further objects to this request because Palisades' safety procedures, protocols, or other training documents for care related to falls are trade secrets and/or confidential. Palisades further objects to the extent that this request is vague and ambiguous to the extent that it employs undefined terms that are confusing to Palisades. This request is also overly broad and unduly burdensome to the extent that it calls for Palisades to produce very iteration of procedures, protocol, and training documents during Ms. Bennett's five year stay at Palisades including superseded policies, protocol, and training documents were not in effect during the incident. Finally, Palisades objects to the extent that this request seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any objections and without limitation: because its policies, procedures, training materials and related documents are trade secrets and are confidential, Palisades insists that an executed and judicially adopted version of the attached STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER be in effect before any production. Moreover, because this request calls for all procedures, protocol, and training documents that are "relevant to issues in this case" and because Palisades has no way of knowing all issues Plaintiffs deems relevant, Palisades agrees to produce the tables of contents for its policies and procedures once the protective order is in place in an attempt to ensure Plaintiff is provided the information he seeks. Those tables of contents are produced herewith as Bennett 3406 – 3467. Plaintiff may then indicate in writing the contents he would like produced from the table of contents and, if Palisades agrees that those sections he requests are in fact relevant to the fall-related care it provided Ms. Bennett, Palisades will produce the selected sections subject to the

judicially adopted STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER.

REQUEST FOR PRODUCTION NO. 6:

Produce all deficiency citations and plans of correction and any other related documents involving **level G or higher** violations received by the facility from CDPHE or the Federal government pertaining to accident prevention, quality of care, quality of life, care planning, resident assessment or which involved immediate jeopardy citations from 2010 to the present together with all facility plans of correction pertaining to such deficiency citations.

RESPONSE TO REQUEST NO. 6:

Palisades objects to this request on the grounds that it asks Palisades to produce publicly available information that is equally available to both parties. To the extent that this request calls for information not publicly available, Palisades objects to this request on the grounds that some of the information sought may be subject to the quality assurance privilege including the privileges codified at C.R.S. § 25-3-109, 42 U.S.C. § 1395i-3(b)(1)(B), and 42 U.S.C. § 1396r(b)(1)(B) and the common law self-evaluative privilege and self-critical analysis privilege. *See, e.g., Bredice v. Doctors Hospital, Inc.*, 50 F.R.D. 249 (D.D.C. 1970).

Subject to and without waiving these objections and without limitation, Palisades understands the information sought by this request is available at the following website:

<http://www.hfemsd2.dphe.state.co.us/hfd2003/dtl.aspx?id=021137&ft=ncf>

Palisades has investigated whether it has any information responsive to this request that is not publicly available. It is not aware of any such information at this time but will supplement if it becomes aware of any.

REQUEST FOR PRODUCTION NO. 7:

Produce any document evidencing employment of pressure alarms, lap buddies, hipster padded briefs or the wearing of hard sole shoes with/soft uppers by Mrs. Bennett during the last 4 months of her life.

RESPONSE TO REQUEST NO. 7:

Palisades objects to this request to the extent it calls for information from documents already in Plaintiff's possession and equally ascertainable by both parties.

Subject to and without waiving this objection and without limitation, Palisades directs Plaintiff to the following (non-exhaustive) sections of the facility chart:

- Physician's Orders: Bennett 223-459
- Nurses Notes: Bennett 1348-1719
- Care Plans: Bennett 1264-1347
- MARS: Bennett 1720-2187
- TARS: Bennett 2188-2377
- CareTracker: Bennett 2975 – 3405

REQUEST FOR PRODUCTION NO. 8:

Produce staffing materials demonstrating the number of nursing hours provided at Palisade's Living Center during Mrs. Bennett's stay there. These documents include schedules, payroll documents, daily staff plans, staffing budgets, labor and variance records and similar documents.

RESPONSE TO REQUEST NO. 8:

Palisades objects to this request as overly broad and unduly burdensome to the extent that it seeks redundant information from numerous reports when the number of nursing hours provided at Palisades can be readily determined from Key Factor reports and PPD-to-Census reports. Palisades objects to production of the information on the documents sought that does not relate to the number of nursing hours at Palisades. The request includes, for example, payroll information and staffing budgets that are irrelevant and not calculated to lead to the discovery of admissible evidence. Palisades further objects to this request to the extent that it calls for trade secrets and/or confidential information.

Subject to and without waiving these objections and without limitation, because

the Key Factor reports and the PPD-to-Census reports include confidential information, Palisades insists that an executed and judicially adopted version of the attached STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER be in effect before any production. Once the court adopts the STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER Palisades will produce the Key Factor reports from August 28, 2008 to December 31, 2010 and the PPD-to-Census reports from January 1, 2011 to August 3, 2013 at Bennett 3468-7074.

REQUEST FOR PRODUCTION NO. 9:

Pursuant to Rule 34, Plaintiff requests that his counsel be allowed to inspect the premises and photograph/video her room, the area where Mrs. Bennett resided on 6/17/2013, the route taken with her to the shower and the hallway where she fell, the north nurses station described in the IDT and the shower area where she was going. **This request is for an inspection during the time counsel is in Palisades for the first depositions.**

RESPONSE TO REQUEST NO. 9:

Palisades objects to this request on the basis that it is oppressive and unduly burdensome during hours when most residents are awake, receiving care and treatment, and otherwise utilizing the facility including the showers. *See O'Connor's Federal Rules * Civil Trials, § 3.3(2) (2013) ("A party should object to a request for entry on land . . . hampers a company's ability to conduct its business or creates a safety hazard. . .")* (citing *New York Ass'n for Retarded Children, Inc. v. Carey*, 706 F.2d 956, 961 (2d Cir. 1983) (finding that a request for inspection of land of a resident care provider for people with severe mental disabilities was improper as the probative value of the information was outweighed by the dangers created by the inspection). Plaintiff asks that his counsel be allowed to inspect areas of the facility where residents with memory impairments, immobility, and other medical conditions reside who may be agitated by the presence of a group of unknown people invading their home, taking photographs, and otherwise

intruding on their privacy and, as such, is a significant impairment on Palisades ability to conduct its business and creates a safety hazard for the residents and staff. Palisades further objects to this request to the extent that it contemplates observing residents receiving medical treatment (and potentially photographing them in the process) without their consent in violation of the Health Information Portability Protection Act.

Subject to and without waiving these objections and without limitation, Palisades will consent to the requested inspection with a limited group of attendees (one representative from Plaintiff and one from Defendant). Palisades objects to Plaintiff taking any photographs during the inspection but Plaintiff can communicate the areas it would like photographed and Palisades will arrange to have the photographs taken while the memory care unit residents are asleep. Palisades objects to inspections and photographs of Ms. Bennett's room at the time of the incident as it is currently occupied.

REQUEST FOR PRODUCTION NO. 10:

Produce your OSCAR data/records regarding falls by residents at this facility for the period 2012 to the present.

RESPONSE TO REQUEST NO. 10:

Palisades objects to this request on the grounds that it asks Palisades to produce publicly available information that is equally available to both parties.

Subject to and without waiving these objections and without limitation, Palisades understands the information sought by this request is available at the following website:

http://www.ahcancal.org/research_data/oscar_data/Pages/default.aspx

Palisades has investigated whether it has any information responsive to this request that is not publicly available. It is not aware of any such information at this time but will supplement if it becomes aware of any.

GORDON & REES LLP

/s/ David M. Clarke

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the above and foregoing was served electronically on the counsel below this 23 day of July, 2014:

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