

IN THE COURT OF COMMON PLEAS FOR DAUPHIN COUNTY

COMMONWEALTH OF PENNSYLVANIA  
By and Through Attorney General  
BRUCE R. BEEMER,

Plaintiff,

v.

Reliant Senior Care Holdings, Inc., RSC  
Consolidated Holdings, LLC, Reliant Senior  
Care Management, LLC, Reliant Audubon  
Holdings, LLC, Reliant Briarcliff Holdings,  
LLC, Reliant Butler Holdings, LLC, Reliant  
Coventry Holdings, LLC, Reliant Denver  
Holdings, LLC, Reliant Easton Holdings, LLC,  
Reliant Evergreen Holdings, LLC, Reliant  
Kade Holdings, LLC, Reliant Lakeside  
Holdings, LLC, Reliant Latrobe, LLC, Reliant  
Millville Holdings, LLC, Reliant Orangeville  
Holdings, LLC, Reliant Osprey Holdings,  
LLC, Reliant Overlook Holdings, LLC, Reliant  
Palmyra Holdings, LLC, Reliant Pembroke,  
LLC, Reliant Praxis Holdings, LLC, Reliant  
Prospect Park, LLC, Reliant Silver Oaks  
Holdings, LLC, Reliant Twin Oaks Holdings,  
LLC, Reliant Valley View, LLC, and Reliant  
White Cliff Holdings, LLC,

Defendants.

2016 OCT -3 PM 1:22  
DAUPHIN COUNTY  
PENNSA

No. 2016 CV-7435-EQ

CIVIL ACTION - EQUITY

**STIPULATED FINAL JUDGMENT AND CONSENT DECREE**

AND NOW, comes the Commonwealth of Pennsylvania, by and through Attorney General Bruce R. Beemer, (hereinafter "the Commonwealth" or "OAG"), having conducted an investigation into the business practices of the above-named Defendants pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 Pa.C.S.A. §§ 201-1 – 201-9.3, and having contemporaneously filed a Complaint and Petition for Injunctive Relief in the above-captioned

action, hereby desires to enter into a Consent Decree to resolve the claims asserted in the Complaint as follows:

### **PARTIES**

This Consent Decree is entered into by and between the Commonwealth of Pennsylvania, acting through the Office of Attorney General (referred to herein as the “**Commonwealth**” and/or the “**Attorney General**”), on the one hand, and Reliant Senior Care Holdings, Inc., RSC Consolidated Holdings, LLC, Reliant Audubon Holdings, LLC, Reliant Briarcliff Holdings, LLC, Reliant Butler Holdings, LLC, Reliant Coventry Holdings, LLC, Reliant Denver Holdings, LLC, Reliant Easton Holdings, LLC, Reliant Evergreen Holdings, LLC, Reliant Kade Holdings, LLC, Reliant Lakeside Holdings, LLC, Reliant Latrobe, LLC, Reliant Millville Holdings, LLC, Reliant Orangeville Holdings, LLC, Reliant Osprey Holdings, LLC, Reliant Overlook Holdings, LLC, Reliant Palmyra Holdings, LLC, Reliant Pembroke, LLC, Reliant Praxis Holdings, LLC, Reliant Prospect Park, LLC, Reliant Silver Oaks Holdings, LLC, Reliant Twin Oaks Holdings, LLC, Reliant Valley View, LLC, Reliant White Cliff Holdings, LLC, and Reliant Senior Care Management, LLC (collectively referred to herein as “**Reliant**”), on the other hand. The Commonwealth and Reliant may be referred to collectively as the “**Parties**” or individually as a “**Party**”.

### **RECITALS**

A. Reliant has engaged in trade and commerce in the Commonwealth of Pennsylvania through the advertisement, promotion, and operation of nursing facilities, which includes, but is not limited, to skilled and unskilled nursing services (referred to herein as “**Skilled Nursing Facilities**”).

B. On August 26, 2014, the Attorney General served subpoenas on Reliant seeking information, *inter alia*, about the number of nurses, including Licensed Practical Nurses (“LPNs”) and Registered Nurses (“RNs”), Certified Nursing Assistants (“CNAs”), and therapy staff working on each shift at Nursing Facilities operated by Reliant. The Attorney General reviewed documents and information produced by Reliant, interviewed CNAs who worked for Reliant and reviewed the Department of Health’s regulatory records as well as labor and acuity data from the Center for Medicare and Medicaid Services (referred to herein as “CMS”).

C. Reliant cooperated in the Attorney General’s investigation.

D. The Attorney General contends that Reliant promised in marketing materials, resident assessments and care plans to provide all the care its residents needed, but failed to staff its facilities adequately to meet its residents’ needs during the period February 2012 through the present. The Attorney General contends the foregoing alleged conduct (the “Covered Conduct”) violates the Unfair Trade Practices and Consumer Protection Law (referred to herein as the “**Consumer Protection Law**” or “CPL”), 73 P.S. §§ 201-1, *et seq.* and gives rise to claims for restitution/restoration, penalties, and approval of attorneys’ fees and costs.

E. Reliant denies that it has failed to provide adequate staffing to meet the needs of its Skilled Nursing Facilities and denies that it has violated the Consumer Protection Law. Moreover, Reliant has advised the Attorney General that it anticipates selling its Skilled Nursing Facilities in the Commonwealth to an independent third party.

F. This Consent Decree is made in compromise of the Parties’ dispute. This Consent Decree is neither an admission of liability by Reliant nor a concession by the Attorney General that its claims are not well-founded.

G. Reliant agrees that by executing this Consent Decree it recognizes and is bound by any and all obligations, liabilities, responsibilities and encumbrances as set forth below. Reliant furthermore recognizes and agrees that the terms of this Consent Decree will apply to Reliant and any Skilled Nursing Facility that Reliant or its parents, subsidiaries, affiliates, or successors owns, acquires or operates in the Commonwealth for a period of time as set forth in Section III A below.

**NOW THEREFORE**, to avoid the delay, uncertainty, inconvenience and expense of protracted litigation and for good and valuable consideration, the sufficiency of which is mutually acknowledged and intending to be legally bound, the Commonwealth and Reliant, for itself, its parents, subsidiaries, affiliates, owners, and successors (as defined below) acting on its behalf agree as follows:

## **SETTLEMENT TERMS**

### **I. DEFINITIONS**

A. "Staff to Acuity" or "Staffing to Acuity" means that a sufficient number of CNAs are working on each shift at each Reliant facility to provide the Basic Care needed by the facility's resident population. The sufficiency of the number of CNAs on duty shall be determined by measuring the resident population's Acuity Level and using the Commonwealth's Staffing Model or a comparable Staffing Model or an Acuity-Based Staffing Methodology approved by the Office of the Attorney General.

B. "Resident Acuity Level" means the Basic Care needs of a resident based upon the resident's individualized: (1) MDS assessment, (2) care plan, (3) ADL flowsheet, and (4) other documentation stating the frequency or number of ADL care services delivered to the resident. The Basic Care needs are equal to the types of assistance needed by the resident (reflected in

Section G of MDS) and the frequency with which such assistance is needed (reflected in resident care plan and ADL flowsheet).

C. "Resident Population Acuity Level" means the total amount of Basic Care required by all of the residents in a facility during a 24-hour period. Resident Population Acuity Level shall be calculated on a quarterly basis and adjusted as needed to account for any 1:1 assignments (meaning, 1 CNA assigned to 1 resident) as frequently as they occur.

D. "Basic Care" means the care provided by Certified Nursing Aides (CNAs) to assist residents with activities of daily living (ADLs) which include: eating and drinking; transferring from a bed to a chair and back, or repositioning in a bed or chair; dressing; showering, bathing, and daily hygiene; toileting and incontinence care; a.m. and p.m. care; transporting residents within the facility, and; Range of Motion (ROM) exercises and assisted walking.

E. "Acuity Based Staffing Methodology" means a method, approved by the Office of the Attorney General, for ensuring that the CNA staffing levels in each nursing home are adjusted in accordance with: (1) the Resident Population Acuity Level; and (2) the required labor time to deliver all Basic Care required by the Resident Population in each nursing home, during a specified 24-hour period. The Acuity Based Staffing Methodology shall include: (1) an accurate calculation of the total number of each type of Basic Care service required by the Resident Population in each nursing home; (2) the average time required to provide each type of Basic Care service; (3) the total amount of labor time required to deliver the total Basic Care services required by the Resident Population broken down by type of service; and (4) a calculation of the additional time required to deliver Basic Care to all residents in each nursing home that are

coded or documented as requiring a 2-person assist from staff in the delivery of any Basic Care service.

F. "Staffing Model" means a methodology, approved by the Office of the Attorney General, for determining the number of CNA hours needed on a daily basis per patient ("ppd") to provide the Basic Care needed by the resident population. At a minimum, the methodology must include a means of quantifying the Basic Care needs of the resident population and converting that workload into hours of labor.

G. "Successor" as used herein refers to any entity that might be formed by, joined, or merged with Reliant, its parents, subsidiaries, or affiliates or an entity in which Reliant's current owners have a controlling interest and which is licensed to operate one or more Skilled Nursing Facilities in the Commonwealth of Pennsylvania or identified as a manager in a license of a Skilled Nursing Facility. Successor does not refer to or include the independent third parties that purchased the Reliant Skilled Nursing Facilities pursuant to a certain Asset Purchase Agreement dated December 9, 2015.

## II. INJUNCTIVE RELIEF

A. The foregoing recitals and premises are incorporated herein and made a part of all the following settlement terms.

B. Reliant, its parents, subsidiaries, affiliates, and successors, are hereby enjoined and prohibited from violating the Pennsylvania Consumer Protection Law, including but not limited to 73 P.S. §§ 201-1 *et seq.*

C. Reliant shall be enjoined from representing in marketing materials, resident assessments, and care plans, that it has provided, is providing, or will provide all the care needed by its residents if it is not Staffing to Acuity.

D. Reliant shall be enjoined from creating patient care records that are not maintained contemporaneously during each shift and signed by the CNA who provided care during the shift.

E. Reliant shall be enjoined from changing staffing levels and staffing assignments during inspections, surveys, and survey windows. In particular, administrative staff shall not perform CNA tasks and CNA staffing shall not be increased above budgeted levels.

F. Reliant shall not otherwise engage in any misleading, confusing or deceptive business practices.

### III. AFFIRMATIVE INJUNCTIVE RELIEF

A. Because Reliant has advertised and marketed or otherwise promised to consumers that its Skilled Nursing Facilities are staffed to meet all resident needs and will meet all resident needs, Reliant, its parents, subsidiaries, affiliates, and successors, hereby agree to the following conditions of owning or operating any Skilled Nursing Facility in the Commonwealth for a period of seven years. Should Reliant, its parents, subsidiaries, affiliates and successors not own, operate or be identified as a manager of a Skilled Nursing Facility in the Commonwealth for seven years from the date this Consent Decree is executed, then this Consent Decree will expire and its terms, other than Section VII, will no longer have any force or effect. The compliance period for the provisions of this Section will begin to run on December 1, 2016, for all Skilled Nursing Facilities except Pembroke. The compliance period for Pembroke will begin to run from the date it is in compliance with CMS's regulations and is removed from the Center for Medicare and Medicaid Services's Special Focus Facility list.

#### *STAFFING*

1. Reliant shall Staff to Acuity at each of its skilled nursing facilities which means

Reliant shall implement at each skilled nursing facility either: (a) an Acuity Based Staffing Methodology or (b) a Staffing Model.

2. The Acuity Level of the Resident Population shall be calculated quarterly, unless significant changes in the Acuity Level of an individual resident (*e.g.*, requiring 1:1 supervision) require more frequent calculations.

#### *QUALITY OF CARE IMPROVEMENTS*

3. Reliant shall implement weekly measurement and monitoring of the following 16 clinical metrics: (1) pressure ulcers, (2) restraints, (3) antipsychotic medications, (4) resident falls, (5) weight loss, (6) continence management, (7) restorative programs, (8) injuries, (9) medication errors, (10) nosocomial infections, (11) dehydration, (12) unplanned hospitalizations, (13) average medications administered per day, (14) timely MDS assessment completion, (15) nursing staff average PPD, and (16) vacant Full-Time Employee ("FTE") nursing staff positions.

#### *NOTICE OF CONSENT DECREE*

4. To the extent that Reliant or its parent, subsidiaries, affiliates or successors own, acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility in the Commonwealth of Pennsylvania, each patient at such facility shall receive notice that they can contact the Office of Attorney General about their complaints pursuant to the Consent Decree, and the Office of Attorney General's toll free phone number and website shall be provided. A summary of the Consent Decree shall be included in the notice.

5. To the extent that Reliant or its parent, subsidiaries, affiliates or successors, own, acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility in the Commonwealth of Pennsylvania, the Notice of the Consent Decree and Office of Attorney General's contact information shall be prominently and conspicuously posted on every occupied floor of the each Skilled Nursing Facility.

6. To the extent that Reliant or its parent, subsidiaries, affiliates or successors own, acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility in the Commonwealth of Pennsylvania, Reliant shall distribute, in a timely manner, a copy of this Consent Decree to all of its officers, management employees, agents, and representatives having sales or policy responsibilities with respect to Reliant's goods and services.

*VERIFICATION OF COMPLIANCE*

7. To the extent that Reliant or its parent, subsidiaries, affiliates or successors own, acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility in the Commonwealth of Pennsylvania, Reliant will annually submit the following, which shall not be divulged by the Commonwealth, except for the purpose of securing compliance with this Consent Decree, or as otherwise required by law:

a. A declaration under oath, as to the fact and manner of Reliant's compliance with the provisions of this Consent Decree. The declaration will be executed by the Chief Executive Officer, as company designee who is responsible for ensuring compliance with this Consent Decree;

b. Representative copies of any and all solicitations sent, directly or indirectly, to Pennsylvania consumers or otherwise promoting Reliant's services, including but not limited to, brochures; direct mailings; radio, television or print media advertisements; telemarketing solicitations; internet postings, facsimiles, electronic messages or communications; and telephone directory advertisements or listings;

c. Information or data detailing the number of solicitations issued in any media; Pennsylvania consumers solicited, directly or indirectly; Pennsylvania consumers who purchased Reliant's services; and the number of complaints received by Reliant from Pennsylvania consumers.

8. Reliant must advise the Attorney General if Reliant or any of its parents, subsidiaries, affiliates, or successors acquires is licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility within 30 days of acquiring or beginning to operate such a facility.

#### IV. MONITORING

1. To the extent Reliant or its parent, subsidiaries, affiliates or successors, own, acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility in the Commonwealth of Pennsylvania, Reliant shall report quarterly to the OAG on staffing and provide sufficient evidence to allow the Office of the Attorney General to determine whether Reliant has complied with the terms of this Consent Decree. Its report shall be accompanied by daily census reports, staffing schedules, payroll records, and the MDSs in effect during the reporting period.

2. To the extent that Reliant or its parent, subsidiaries, affiliates or successors, own, acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility in the Commonwealth of Pennsylvania, Reliant shall provide access to its facilities and resident emergency contact information to an ombudsman selected by OAG, who shall interview a sample of residents, residents' family members, and staff on a semi-annual basis regarding the delivery of Basic Care.

3. To the extent that Reliant or its parent, subsidiaries, affiliates or successors, own,

acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility in the Commonwealth of Pennsylvania, Reliant shall forward to the Attorney General copies of all deficiency notices, complaints and reported incidents within a reasonable period of receipt or discovery.

4. To the extent that Reliant or its parent, subsidiaries, affiliates or successors, own, acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility, the Attorney General, or designees, during the duration of this Consent Decree, shall have the right of entry and access without prior notice to the Skilled Nursing Facilities and the right to examine any and all documents and records.

#### **V. PAYMENTS TO THE COMMONWEALTH**

A. Reliant shall pay to the Pennsylvania Office of Attorney General, by certified check, cashier's check, attorney's check, wire transfer or money order, made payable to the "Commonwealth of Pennsylvania":

1. Payment to the Commonwealth - The amount of \$2,000,000 (Two Million Dollars) shall be allocated to the Pennsylvania Office of Attorney General, to be deposited in an interest-bearing account from which both principal and interest shall be used at the sole discretion of the Attorney General to defray the costs of the inquiry leading hereto, and may be used for future consumer protection enforcement, public protection, consumer education, litigation, restitution/restoration to consumers or Commonwealth Program Payors, or be subject to OAG internal cy pres, or for other uses permitted by state law, at the sole discretion of each Attorney General. The amount, timing, and manner of the allocation and distribution of said payment shall be at the sole discretion of the Attorney General and submitted to a court of competent jurisdiction for an order of distribution.

2. Costs of Monitoring –Reliant shall agree to pay the Commonwealth’s costs for monitoring compliance with the Consent Decree to the extent that Reliant or its parents, subsidiaries, affiliates or successors, own, acquire, become licensed to operate, or are identified in a license as a manager of a Skilled Nursing Facility in the Commonwealth of Pennsylvania.

3. Costs of Enforcing the Consent Decree – Should the Commonwealth initiate litigation to enforce the terms of the Consent Decree and prevail in such action, Reliant will pay the Commonwealth’s costs of such enforcement.

## VI. RELEASE

For and in consideration of the obligations set forth in this Consent Decree, including the obligations of the owners under Section I. G above, for which Reliant agrees to undertake and upon receipt of the payment set forth above, the Commonwealth and the Attorney General hereby unconditionally release and forever discharge Reliant, together with its parents, subsidiaries, affiliates, owners and successors, directly, indirectly or through any corporate device from any civil or administrative claims, causes of action, suits, complaints, damages, costs, attorney’s fees, and expenses of any kind, in law, equity or otherwise, whether known or unknown, suspected or unsuspected that the Commonwealth and/or the Attorney General have or could have for the Covered Conduct, from January 1, 2012 until the date of this Consent Decree except no release of liability shall arise out of or be related to the Covered Conduct with respect to the following: any tax owed to the Commonwealth; any criminal liability; any claims or liabilities owing to other Commonwealth agencies, boards, commissions, or independent agencies. This Release is conditioned upon the veracity of the financial documents provided to the Attorney General in connection with its investigation of Reliant.

## VII. MISCELLANEOUS TERMS

A. Reliant desires to comply with the laws of the Commonwealth and the provisions of this Consent Decree and has executed this Consent Decree with the intent that, upon approval of a court of competent jurisdiction, the provisions of this Consent Decree shall constitute the provisions of a Final Decree of that court.

B. This Consent Decree does not constitute an approval by the Commonwealth of any of Reliant's provider or management methods, advertisements or solicitations; and neither Reliant nor its parents, subsidiaries, affiliates, successors, owners, officers, directors, agents, employees, representatives or any other persons acting on its behalf shall make any representation to the contrary.

C. Nothing contained in this Consent Decree shall be construed to waive or limit any right of action by any consumer, person or entity, or by any local, state (other than the Attorney General), federal or other governmental entity.

D. The Commonwealth and Reliant hereby stipulate that the Final Decree of this Court to be issued pursuant to this Consent Decree shall act as a permanent injunction issued under Section 2014 of the Consumer Protection Law and that subject to the specific terms and conditions stated in this Consent Decree, breach of any of the terms of this Consent Decree or of the Final Decree accompanying it shall be sufficient cause for the Commonwealth by its Attorney General, to seek penalties as provided in Section 201-8 of the Consumer Protection Law or any other relief as the Court shall determine.

E. Nothing in this Consent Decree shall prevent or restrict the use of this Consent Decree by the Commonwealth in any action against Reliant for contempt or failure to comply with any provision of this Consent Decree, or in the event that Reliant is in default of any of the terms and conditions of this Consent Decree. A default on the part of Reliant shall include any

default or breach by Reliant of any of the terms or requirements of this Consent Decree. Nothing in this Consent Decree shall be construed to (1) exonerate any contempt or failure to comply with any provision of this Consent Decree after the Effective Date; (2) compromise or limit the authority of the Commonwealth to initiate a proceeding for any contempt or other sanctions for failure to comply; or (3) compromise the authority of Commonwealth Court or any other court of competent jurisdiction to punish as contempt any violation of this Consent Decree.

F. Any failure of the Commonwealth to exercise any of its rights under this Consent Decree shall not constitute a waiver of those rights.

G. Reliant agrees to execute and deliver all authorizations, documents and instruments that are necessary to carry out the terms and conditions of this Consent Decree.

H. Time shall be of the essence with regard to Reliant's obligations hereunder.

I. This Consent Decree may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Consent Decree may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

J. This Consent Decree sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Consent Decree that are not fully expressed herein or attached hereto. Each party specifically warrants that this Consent Decree is executed without



forth in Section III A. above which begins to run at the time this Consent Decree is approved by a court of competent jurisdiction.

O. This Consent Decree is binding on the parties from the date it is executed. Its provisions shall take effect on the date the Consent Decree is executed unless otherwise specified herein.

**WHEREFORE**, without a trial or adjudication of the facts or law, Reliant agrees to the signing of this Consent Decree; and accordingly, this Court hereby orders that Reliant shall be permanently enjoined from breaching any and all of the aforementioned provisions.

#  
#  
#  
#  
#  
#  
#  
#  
#  
#  
#  
#  
#

We the undersigned agree to this Consent Decree as a Final Decree and submit the same to this Honorable Court for the making and entry of a final Order of the Court on the first date indicated below.

**THE COMMONWEALTH OF PENNSYLVANIA**

By: Thomas M. Devlin  
Thomas M. Devlin  
Chief Deputy Attorney General  
Date: 9/26/2016

**RSC CONSOLIDATED HOLDINGS, LLC**

By: Nathan Niles  
Name: Nathan Niles  
Title: President  
Date: 9/26/2016

**RELIANT SENIOR CARE HOLDINGS INC.**

By: Nathan Niles  
Name: Nathan Niles  
Title: Treasurer  
Date: 9/26/2016

**RELIANT SENIOR CARE MANAGEMENT INC.**

By: Nathan Niles  
Name: Nathan Niles  
Title: Treasurer  
Date: 9/26/2016