

2013 WL 4799463 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

Richard DICKINSON, Thelma Cramer, Shirley McClane, and Martha Barney, Plaintiffs,

v.

HOLIDAY RETIREMENT, Inc., a Delaware Corporation; Holiday Retirement Corp., an Oregon Corporation; Hrc Investors, an Oregon Corporation; Harvest Management Sub LLC, a Delaware Limited Liability Company; Harvest Facility Holdings LP, a Delaware Limited Partnership; Parkrose Retirement Residence, an Oregon Limited Partnership dba Parkrose Chateau; Vineyard Place Retirement Residence, an Oregon Limited Liability Company dba Vineyard Place; Rockcreek Retirement Residence, an Oregon Limited Liability Company dba Rock Creek;; Defendants.

No. 130812386.
August 27, 2013.

Claims not Subject to Mandatory Arbitration
Jury Trial Demanded

**COMPLAINT - Abuse of Vulnerable Persons, Unlawful Trade Practices
Act, Breach of Contract, Negligent Misrepresentation, Declaratory Relief**

Andrea N. Ogston, OSB # 053360, Legal Aid Services of Oregon, 921 Sw Washington St Ste 500, Portland or 97205, Of Attorneys for Plaintiff, P:503-224-4086/f:503-295-9496, andrea.ogston@lasoregon.org.

Carolyn M. Norton OSB #111623, Oregon Law Center, 921 Sw Washington St Ste 516, Portland or 97205, P:503-473-8322/f:503-295-0676, cnorton @oregonlawcenter.org, Of Attorneys for Plaintiffs, Trial Attorneys: Andrea N. Ogston, Carolyn M. Norton.

INTRODUCTION

1.

Plaintiffs are low-income **elderly** war veterans or low-income **elderly** surviving spouses of war veterans who currently reside in senior retirement communities owned and operated by a network of companies using the name Holiday Retirement (collectively "Holiday"). Plaintiffs allege that Defendants deceived them as part of a scheme to increase occupancy rates and rental income at retirement communities operated by Holiday. Holiday targeted war veterans and their survivors as potential residents and induced them to move into high-cost housing by misrepresenting a pension program administered by the United States Department of Veterans Affairs (the "VA") called Aid and Attendance and Homebound Status ("Aid and Attendance").

2.

Holiday's misrepresentations included the likelihood that the veteran or survivor would be eligible for Aid and Attendance benefits, the amount of Aid and Attendance benefits to which the veteran or survivor would be entitled, the time required for the VA to process an Aid and Attendance application, whether moving into a Holiday property would enhance their application for Aid and Attendance benefits, and the need to pay professionals to submit an Aid and Attendance application on their behalf. Holiday also engaged in predatory sales practices to close the deal, such as repeated telephone calls, solicitations to attend

“seminars” and open houses, suggesting the possibility that Holiday would reimburse certain costs, assuring prospective tenants that Holiday would pay for moving costs, offering confusing discounts and reduced rent and pressuring Plaintiffs to immediately sign multi-page residency agreements and confusing addenda or risk losing the incentives offered by Holiday. Plaintiffs relied on these misrepresentations in deciding to move into a Holiday property and were wrongfully induced into agreeing to high monthly rent payments they could not afford.

3.

Plaintiffs bring claims based on Oregon's **elder abuse** statutes, [ORS 124.110 et seq.](#), the Unlawful Trade Practices Act, [ORS 646.010 et seq.](#), negligent misrepresentation and breach of contract. They seek damages and declaratory relief.

JURISDICTION AND VENUE

4.

The Court has jurisdiction over this action pursuant to [ORS 14.030](#) because Plaintiffs are Oregon citizens and Defendants' principal places of business are in Oregon.

5.

Venue in Multnomah County is appropriate under [ORS 14.080](#) because a substantial part of the events giving rise to Plaintiffs' claims occurred in Multnomah County.

6.

This Court has power to issue the declaratory judgment sought by Plaintiffs pursuant to [ORS 28.010](#).

THE PARTIES

A. Plaintiffs

7.

Plaintiff Richard Dickinson was born on born on XX/XX/1931. He is eighty-three years old and a veteran of the Korean Conflict. At all relevant times, Mr. Dickinson resided in Multnomah County, Oregon. Mr. Dickinson currently resides at Parkrose Chateau, a property owned and operated by Holiday and located in Multnomah County.

8.

Plaintiff Thelma Cramer was born on XX/XX/1932. She is an eighty-year old widow, and her deceased husband was a veteran of World War II. At all relevant times, Ms. Cramer resided in Washington County, Oregon. Ms. Cramer currently resides at Rock Creek, a property owned and operated by Holiday and located in Washington County.

9.

Plaintiff Shirley McClane was born on XX/XX/1941. She is a seventy-two year old widow, and her deceased husband was a veteran of the Korean Conflict. At all relevant times, Ms. McClane resided in Clackamas County, Oregon. Ms. McClane currently resides at Vineyard Place, a property owned and operated by Holiday and located in Clackamas County.

10.

Plaintiff Martha Barney was born on XX/XX/1942. She is seventy-one years old and a veteran of the Vietnam War where she served in the Army Medical Corps as a registered nurse. At all relevant times, Ms. Barney resided in Clackamas County, Oregon. Ms. Barney currently resides at Vineyard Place, a property owned and operated by Holiday and located in Clackamas County.

B. Defendants

11.

Defendant Holiday Retirement, Inc. is a Delaware Corporation with its principal place of business in Lake Oswego, Oregon.

12.

Defendant HRC Investors is an Oregon Corporation with its principal place of business in Salem, Oregon.

13.

Defendant Holiday Retirement Corp. is an Oregon Corporation with its principal place of business in Salem, Oregon.

14.

Defendant Harvest Management Sub LLC is a Delaware limited liability company with its principal place of business in Lake Oswego, Oregon.

15.

Defendant Harvest Facility Holdings LP is a Delaware Limited Partnership with its principal place of business in Salem, Oregon.

16.

Each of the Defendants listed in paragraphs 11-15 describes itself as operating senior living facilities throughout North America, under the name “Holiday Retirement” and uses holidaytouch.com as its web address. Holidaytouch.com is a general website that advertises Holiday Retirement senior living residences under the tab “Our Communities,” including those in which Plaintiffs reside.

17.

Defendant Parkrose Retirement Residence is an Oregon Limited Partnership which operates a senior living residence in Multnomah County, Oregon under the name Parkrose Chateau. Parkrose Chateau advertises itself under the name “Holiday Retirement.”

18.

Defendant Vineyard Place Retirement Residence is an Oregon Limited Liability Company which operates a senior living residence in Clackamas County, Oregon under the name Vineyard Place. Vineyard Place advertises itself under the name “Holiday Retirement.”

19.

Defendant Rock Creek Retirement Residence is an Oregon Limited Liability Company which operates a senior living residence in Washington County, Oregon under the name Rock Creek. Rock Creek advertises itself under the name “Holiday Retirement.”

20.

On information and belief, each of the Defendants is a parent, subsidiary, affiliate, principal, agent, or control person of the others, and each has knowledge of and provided substantial assistance to the improper trade practices alleged in this complaint

FACTUAL ALLEGATIONS

21.

Aid and Attendance is a federal program under which monthly benefits may be awarded to veterans or their survivors who served on active duty during a wartime period and have limited income. [38 CFR § 3.3](#). To be deemed eligible for Aid and Attendance, the veteran or survivor must prove that he or she needs assistance with activities of daily living including self-care tasks such as the ability to dress, cook for oneself and use the toilet independently. 38 CFR § .351. Subject to limited exceptions, only Veteran Certified Representatives are allowed to submit applications on behalf of recipients. [38 CFR § 14.636](#). It is a violation of federal law to charge a veteran for assistance in submitting an Aid and Attendance application. [38 CFR § 14.636](#). A veteran or their survivor can receive benefits in-home; there is no need for an applicant to move to or reside in a senior-living residence in order to receive Aid and Attendance benefits. [38 CFR § 3.3](#).

22.

Holiday operates more than 300 senior living residences throughout the United States. Part of Holiday's business plan is to target veterans of military service and their survivors as prospective tenants; the holidaytouch.com website used by Defendants states, among other things, that Holiday is “different from other senior living providers” in that it is “dedicated to celebrating veterans and supporting important veteran-related causes.” In 2011, the holidaytouch.com website had a special page devoted to Aid and Attendance which claimed that “[B]ecause Holiday Retirement provides meal service, transportation, and 24-hour attendance to emergency call systems in each apartment, simply living at a Holiday Retirement community could help veterans qualify.” In fact, as alleged in more detail below, Holiday engages in deceptive trade practices designed to induce veterans and their surviving spouses to move into its facilities whether or not they can afford the monthly rent. These trade practices include misrepresenting the Aid and Attendance program, falsely offering discounts and other “incentives,” and pressuring elderly veterans and survivors to act quickly so these “benefits” will not be lost.

23.

Each Plaintiff is a victim of Holiday's deceptive practices. Each of them moved into a Holiday retirement residence based on a promise by Holiday that they would receive Aid and Attendance benefits from the VA within a short period of time and in an amount that would substantially offset the rents charged by Holiday. Despite portraying that it was neutral in the application

process, Holiday falsely represented that there was an increased likelihood of approval for Aid and Attendance benefits merely by moving into a Holiday residence. In addition, Holiday staff or agents promised to assist in processing Plaintiffs' applications, assured Plaintiffs their applications would be approved in a timely manner, and offered incentives or discounts to supposedly bridge the financial gap between their income and the promised Aid and Attendance benefits. Some Plaintiffs were referred to and required to pay attorneys or other professionals selected by Holiday to process their application.

24.

As part of Holiday's sales pitch each Plaintiff was presented with a large packet of standardized documents which they were told they must sign as a condition of living in a Holiday residence. The packet included a "Residence and Service Agreement" ("Residency Agreement") and, depending on which boxes on the Residency Agreement were checked by Holiday personnel, a large number of "forms and addenda" that allegedly were "attached to" and "a part of" the Residency Agreement. The forms and addenda presented to some or all Plaintiffs as part of their Residency Agreements included: "Addendum LI - Liability Insurance;" "Addendum CIF - Community Initiation Fee;" "Addendum A&L - Arbitration and Liability;" "Addendum I - Rental Incentives;" "Motorized Cart (MOBIE)" and "Addendum VA" regarding Aid and Attendance benefits. In addition, some Plaintiffs were presented with documents bearing titles such as "Release of Rights," "Unit Billing Move-In," and "Referral Fee Payment Request." Examples of the standardized documents presented to Plaintiffs are attached as Exhibit A to this Complaint.

25.

None of the documents prepared by Holiday were explained to Plaintiffs; to the contrary, each of them was urged to sign them immediately and without meaningful review in order to preserve the various discounts and other incentives they were offered. Plaintiffs were not given executed copies of documents they signed and it is not clear whether each Plaintiff signed each of the presented documents. As alleged in this Complaint, each Plaintiff moved into a Holiday residence in reliance on misrepresentations regarding the Aid and Attendance program and offers of incentives by Holiday, and as a result of high pressure sales tactics by Holiday representatives. As a result, each of them is being charged rent that is beyond their means and continues to increase, and some Plaintiffs have been subjected to harassing collection demands by Holiday.

A. Richard Dickinson

26.

Mr. Dickinson has lived at Parkrose Chateau, a property owned and operated by Holiday, since July 2011. He suffers from hearing loss, partial blocked lung, partial emphysema, limited mobility, cervical stenosis, and peripheral neuropathy. The highest level of education Mr. Dickinson completed is high school and some coursework at a community college.

27.

Prior to living at Parkrose Chateau, Mr. Dickinson lived independently in a duplex he rented with a friend after his wife died. After living in the same duplex for approximately ten years, Mr. Dickinson learned that his rent was being increased. At that time, Mr. Dickinson paid approximately \$960.00 in rent. Mr. Dickinson was concerned he could not afford the increased rent, so he began looking for other housing options.

28.

In or around June 2011, Mr. Dickinson learned from his sister about Holiday's senior retirement communities. Mr. Dickinson's sister explained that she had recently attended a meeting sponsored by Holiday and was told that, if a veteran resided at a Holiday property, they were more likely to qualify for Aid and Attendance benefits.

29.

After this conversation, Mr. Dickinson contacted Parkrose Chateau, a Holiday property near his home, and scheduled a meeting with a sales person. At this initial meeting, the Holiday salesperson informed Mr. Dickinson that he would be eligible for Aid and Attendance benefits if he moved into a Holiday property, stating: "You qualify. Move him in." Mr. Dickinson was told that he was entitled to the maximum amount of Aid and Attendance benefits of approximately \$1,644.00 per month. Mr. Dickinson calculated that, while his living expenses would be greatly increased, he would be able to afford his higher housing costs with the income from the Aid and Attendance benefit. At that time, Mr. Dickinson had limited savings of approximately \$6,600.00 and his monthly income was \$2,200.00, a combination of pension benefits and Social Security retirement benefits. Based on the assurances that he would receive Aid and Attendance benefits within a few months, Mr. Dickinson calculated that even after he paid the deferred rent, he would be able to meet his monthly obligations.

30.

In the weeks following this initial meeting, Mr. Dickinson received multiple telephone calls from a Holiday salesperson inviting him to return to Parkrose Chateau for additional "free lunches" and reminding him of his eligibility for Aid and Attendance. Mr. Dickinson had three to four lunches at Parkrose Chateau where Holiday continued to stress his eligibility for Aid and Attendance benefits in an amount that would substantially offset the higher rent. He received calls almost every other day reminding him that Holiday wanted him to move into Parkrose Chateau.

31.

On or about July 7, 2011 Mr. Dickinson signed a Residency Agreement and an Incentives Addendum with Holiday. These documents provided for monthly rent of \$3,685.00, including meals, with the understanding that \$822.00 of the rent would be deferred each month until he was approved for Aid and Attendance. In addition, the document provided for a "discount" of \$385.00 bringing Mr. Dickinson's total monthly rental obligation to \$2,478.00. On the day Mr. Dickinson signed his Residency Agreement, he also was told he must execute the following addenda: Release of Rights, Arbitration and Liability, Community Initiation Fee, Referral Fee Payment Request, Rental Addendum, and Addendum VA. These documents were presented to him with no explanation of their terms and little time to review them. The "Addendum VA" provides: "In the event the resident is denied the A&A Benefit by the VA, Resident's Deferred Amount will be waived in its entirety, and the Resident shall not be responsible for reimbursement thereof." This first "Addendum VA" covered the period from July 7, 2011 to December 31, 2011. On or about August 20, 2011, a Holiday salesperson requested that Mr. Dickinson sign a new "Addendum VA" covering the period of September 1, 2011 to March 1, 2012.

32.

The rental "incentives" Holiday offered to Mr. Dickinson were intended to confuse and mislead. Initially, he was not charged any rent for July 2011 and his August 2011 rent was prorated. One form he received upon signing the Residency Agreement, called a "Unit Billing Move-In," put his "total savings" as \$6,648.00. At the same time, Mr. Dickinson received another document titled "Rental Incentive" that put his total savings at \$9,713.53. The discrepancies in these amounts never were explained to him.

33.

In July 2011, Mr. Dickinson moved into Parkrose Chateau. Holiday staff referred him to a moving company called Moving Seniors to assist him with the move. Moving Seniors initially quoted Mr. Dickinson \$500.00 for the move but then demanded \$1,100.00 to complete the job along with other fees. After Mr. Dickinson tendered payment, the movers failed to pay him the proceeds from an estate sale that they held on his behalf.

34.

Mr. Dickinson has used a combination of the recovery he received from his renters insurance policy due to the moving company's fraud, as well as his limited savings to pay his monthly rental obligation. Since moving into Parkrose Chateau, Mr. Dickinson has depleted all of his savings.

35.

At the time Mr. Dickinson moved into Parkrose Chateau, Holiday staff or personnel told him that they were moving forward with processing his Aid and Attendance application. In or around July 2011, he provided the necessary documents in support of his application and submitted them to Holiday management.

36.

After several months passed, Mr. Dickinson became concerned regarding the status of his application. He contacted the on-site managers of Parkrose Chateau and was informed that "someone had dropped the ball." In addition to the resulting delay in submitting his application to the VA, Mr. Dickinson had to start anew gathering all of the necessary documents, including obtaining a new original birth certificate and his wife's death certificate. He incurred \$74.00 in fees to obtain these new documents.

37.

On October 13, 2011, Holiday staff at Parkrose Chateau submitted a new Aid and Attendance application to the VA on behalf of Mr. Dickinson. On information and belief, no staff member at Parkrose Chateau is certified as a Veteran Certified Representative.

38.

On August 1, 2012, Mr. Dickinson's rent was raised to \$3,482.00.

39.

On November 4, 2012, Mr. Dickinson received a letter from Parkrose Chateau stating that he owed an outstanding balance of \$13,218.00. The letter also stated that a portion of his rent would no longer be deferred. This was Mr. Dickinson's first indication that Holiday's representations that induced him to move into Parkrose Chateau might not have been true.

40.

On or around December 2012, Mr. Dickinson's application for Aid and Attendance was denied. At this time, Mr. Dickinson learned that the individuals who had initially "approved" him for move-in to Parkrose Chateau were not representatives of the Veterans Administration, as he had been led to believe.

41.

On January 11,2013, Mr. Dickinson received a letter stating that his account was current “until he receives his award from the Department of Veterans Affairs.”

42.

On February 14,2013, Mr. Dickinson received a letter from Parkrose Chateau stating he had an outstanding balance of \$16,506.00. The letter demanded payment as soon as possible.

43.

After Mr. Dickinson's counsel sent several cease and desist letters to Defendants, Mr. Dickinson received a letter on May 30,2013 stating that he no longer had a balance on his account. To date, Mr. Dickinson has not been approved for Aid and Attendance.

44.

On June 21,2013, Mr. Dickinson was notified of another rent increase in the amount of \$148.00 per month. His current monthly rental obligation is \$3,630.00.

45.

Mr. Dickinson's health and mobility have declined since moving to Parkrose Chateau due in part to the financial stress of being unable to meet his monthly obligations. Mr. Dickinson has depleted his savings in attempting to satisfy his payments under the Residency Agreement and he has had to borrow money from his brother to pay his rent. Since his brother's recent death, he has felt even more uncertain regarding his ability to maintain his housing.

B. Thelma Cramer

46.

Ms. Cramer has lived at Rock Creek, a property owned and operated by Holiday, since October 2011. She suffers coronary artery disease, degenerative disc disease, glaucoma, hypertension peripheral vascular disease, carotid and renal artery stenosis, depression and memory problems. The highest level of education Ms. Cramer completed is eighth grade.

47.

In 2011, Ms. Cramer was living independently and paying approximately \$500.00-\$700.00 per month in rent. At that time, Ms. Cramer's income was approximately \$1,287.00 per month from a combination of pension benefits and Social Security retirement benefits.

48.

On or around August or September 2011, Ms. Cramer's daughter, Nena Chavez, drove by the Rock Creek property, and later made an appointment to view the property. During the tour, a sales representative told Ms. Chavez that her mother would be

eligible for Aid and Attendance benefits through the VA because her deceased spouse was a veteran. The sales representative gave Ms. Chavez a “rent deferral questionnaire” and encouraged her to call one of the “VA Contacts” provided on a separate form to determine if Ms. Cramer was in fact eligible for Aid and Attendance. Ms. Chavez called the number provided, answered some basic questions regarding her mother's income and her status as a spouse of a deceased veteran, and was told that her mother qualified for Aid and Attendance. At the time, Ms. Chavez believed she was calling the VA.

49.

Shortly after this tour, Ms. Chavez arranged another tour of Rock Creek, for herself and Ms. Cramer. During the tour, Ms. Cramer commented on the small size of the studio apartments. The Rock Creek sales representative told her that, once she moved into Rock Creek, she could transfer to a one-bedroom apartment when one became available for the same amount of monthly rent. Ms. Cramer and Ms. Chavez were shown a studio apartment that cost \$1875.00 per month. The sales representative explained that Rock Creek would defer \$1000.00 of the rent each month if Ms. Cramer applied for Aid and Attendance benefits and that the deferral would remain in place until her application for Aid and Attendance benefits was approved. The sales representative also offered additional incentives which included a two-year rent freeze, a reduced security deposit in the amount of \$500.00 (reduced from \$1395.00), free rent for the remainder of the month of September 2011, and free rent during the week of the Christmas holiday. At the end of the tour, the sales representative told Ms. Cramer and Ms. Chavez that Rock Creek could only offer the rental incentives for the next twenty-four hours.

50.

Later that day, Ms. Chavez received an email from Holiday staff at Rock Creek staff confirming the rental incentives and that a certain portion of the rent would be deferred until Ms. Cramer began receiving Aid and Attendance benefits. That same day, Ms. Chavez received another email from Holiday staff at Rock Creek stating that Ms. Cramer's eligibility for Aid and Attendance looked “rock solid” and “there are no indicators that her qualifications [sic] for benefits is in jeopardy.”

51.

On or about September 6, 2011, Ms. Cramer and Ms. Chavez returned to Rock Creek to sign the necessary paperwork so Ms. Cramer could move into Rock Creek. In addition to the Rental Agreement, Ms. Cramer was told she must execute the following forms and addenda: Release of Rights, Rent Freeze, Rental Incentive, Motorized Cart, Pets, and Arbitration and Liability Addendum. None of the documents were explained to Ms. Cramer or Ms. Chavez, and they both felt very rushed and did not have an opportunity to review the documents. Ms. Cramer was presented with and also signed a Memorandum of Understanding with an organization called the American Association for Wartime Veterans (AAWV) which provided that the AAWV will “assist in preparing an approvable application on a timely basis and forwarding that application to the Regional Veteran's Administration Office.” The Rental Agreement provided that the monthly rent was \$1895.00. Another document titled “Unit Billing Move-In Accounting” stated that Bob Elhard referred Ms. Cramer to Rock Creek and that he would receive a referral fee of \$1,500.00. At the time of the signing, neither Ms. Chavez nor Ms. Cramer had met anyone named Bob Elhard.

52.

On or around September 13, 2011, Ms. Chavez met briefly with Bob Elhard at Rock Creek prior to a “seminar” Mr. Elhard was hosting on Aid and Attendance benefits. Ms. Chavez asked Mr. Elhard to review her mother's application for Aid and Attendance benefits. Mr. Elhard reviewed the application and stated that he did not see any problems with Ms. Cramer's application. That same day, Ms. Chavez spoke to a Holiday manager about her mother's application. Ms. Chavez expressed concerns about whether her mother's application for Aid and Attendance benefits would be approved and reiterated that her mother could not

afford the rent without the Aid and Attendance benefit. The manager told Ms. Chavez not to worry and stated that in the three years she had worked at Holiday, she had never seen the VA deny an application.

53.

Ms. Cramer moved into Rock Creek on September 16, 2011. After moving in, Ms. Cramer requested a one-bedroom unit but Holiday staff have repeatedly told her that the cost of a one-bedroom apartment is significantly higher than the cost of a studio apartment.

54.

On or about October 5, 2011, Ms. Chavez gave her mother's Aid and Attendance application to one of the Rock Creek on-site managers. On or about December 23, 2011, John E. Casterline, an attorney licensed in the state of Michigan, submitted an Aid and Attendance application to the VA on behalf of Ms. Cramer. Ms. Cramer and Ms. Chavez do not know Mr. Casterline and have never had contact with anyone from his office.

55.

On or about January 15, 2012, a Rock Creek assistant manager knocked on Ms. Cramer's door and asked her to sign a document. Ms. Cramer had just woken up and felt somewhat disoriented. She explained to the manager that her vision is very poor and that she cannot read well as a result. The manager instructed Ms. Cramer to go ahead and sign the proposed document. The document she signed is titled Addendum VA and is in very small print. The Addendum VA provides: "In the event the resident is denied the A&A Benefit by the VA, Resident's Deferred Amount will be waived in its entirety, and the Resident shall not be responsible for reimbursement thereof." The font was so small Ms. Cramer was unaware that Holiday did not have the right to reimbursement of any of deferred rent if her application for Aid and Attendance was denied. The first Addendum VA that Ms. Cramer signed provided that \$750.00 of the current rent would be deferred and that the rent deferral began on February 1, 2012. Several days later Ms. Chavez reviewed the Addendum VA and noticed that the amount deferred, \$750.00, was less than the \$1,000.00 Ms. Cramer had been promised. Ms. Chavez pointed this out to Holiday management and was provided with a new document stating that \$1,000.00 of the rent would be deferred. Both documents have very small print.

56.

Since Ms. Cramer moved in, she has been paying \$895.00 each month in rent in accordance with her agreement with Holiday. In January and February 2013, Ms. Cramer received several letters from Rock Creek stating that she owes the entire amount of deferred rent going back to September 2011 in the amounts of \$11,072.10 and \$12,072.10 respectively. This was Ms. Cramer's first indication that Holiday's representations that induced her to move into Parkrose Chateau might not have been true.

57.

To date, Ms. Cramer has not been approved for Aid and Attendance benefits. She suffers from depression, stress and anxiety from the uncertainty of her current rental situation. She currently takes anti-depressants to address her depression. She recently received a notice that her rent will be increased to \$945.00 as of September 1, 2013. Ms. Cramer's total income is currently \$1,309.21.

C. Shirley McClane

58.

Ms. McClane has lived at Vineyard Place, a property owned and operated by Holiday, since October 26, 2012. Ms. McClane suffers from congestive heart failure which makes even slight exertion exhausting. The highest level of education Ms. McClane completed is high school.

59.

Prior to moving to Vineyard Place, Ms. McClane paid approximately \$630.00 per month in rent. She had lived in the same apartment for twenty-six years.

60.

In or around September 2012, Ms. McClane began exploring other living options due to issues with her neighbor. Ms. McClane's daughter, Karen Marin, provided her with a list of local retirement communities. Vineyard Place was included on this list. After providing the list to her mother, Ms. Marin saw online that there was an upcoming "seminar" being held at Vineyard Place regarding Aid and Attendance benefits and informed Ms. McClane. In or around September 2012, Ms. McClane attended a seminar on Aid and Attendance benefits held at Vineyard Place. The person presenting at the seminar was the Vineyard Place on-site manager, Kimberly Olinger.

61.

During the presentation, Ms. McClane was informed of the minimum amount of rent required to reside at Vineyard Place. Based on this information, Ms. McClane understood she could not afford to live at Vineyard Place and Ms. McClane left the seminar. As she walked to her car, Vineyard Place assistant manager, Larry Arias, followed her to the parking lot and asked why she was leaving. Ms. McClane explained that she could not afford the housing costs associated with living at Vineyard Place. Ms. McClane repeated no less than three to four times that she could not afford to live at Vineyard Place. Mr. Arias offered to call what Ms. McClane understood to be the VA to see if she was eligible for Aid and Attendance benefits to offset some of her rental costs. While standing in the parking lot, Mr. Arias made a telephone call and then handed the phone to Ms. McClane. The individual on the phone asked Ms. McClane a few questions regarding her health and then told Ms. McClane, "You qualify. You can move in." After the phone call, Ms. McClane explained to Mr. Arias that she could also not afford the costs associated with moving. Mr. Arias stated he would cover her moving costs or would work something out to help her move.

62.

Later that week, Ms. McClane was invited back to Vineyard Place for a tour and a "free lunch." Ms. McClane repeatedly told Vineyard Place staff that she could not afford the higher rent. During this tour, Ms. McClane was shown an apartment and told that she needed to sign for the apartment that same day or she would lose the unit. At that time, Ms. McClane's total monthly income was \$2,080.00. Prior to moving in, she was told her total rent would be \$2,185.00 but that after her Aid and Attendance benefits were approved she would pay \$1,100.00. That same day, Ms. Olinger presented Ms. McClane with a packet of documents for her to sign. A document titled Unit Billing Move-In shows that Ms. McClane's rent was \$2,735.00 and that she would receive a "discount" of \$550.00 bringing her total monthly rental obligation to \$2,185.00, with meals included. On the day that Ms. McClane signed the Residency Agreement, she was also asked to execute the following forms and addenda: Release of Rights, Addendum I Rental Incentive and the Arbitration and Liability Addendum. In addition, Ms. Olinger told Ms. McClane that she needed to send \$700.00 to an attorney in Nashville, Tennessee affiliated with an organization called the Center for **Elder** Veterans Rights, PC in order to process her Aid and Attendance application. Ms. McClane stated that she

could not afford to pay \$700.00, but she was told to put it on her credit card and Vineyard Place would give her a \$700.00 rent credit in December 2012.

63.

In or around September 2012, Ms. McClane provided all of the required information to complete her Aid and Attendance application to the Center for **Elder** Veterans Rights, PC. Holiday staff told Ms. McClane her application would take only twenty-eight days to be approved or no later than the first of December 2012.

64.

In October 2012, Ms. McClane moved into Vineyard Place. Her moving costs were paid for by Vineyard Place.

65.

In December 2012, Ms. Olinger refused to give Ms. McClane the promised rent credit for the \$700.00 she paid to the Center for **Elder** Veterans Rights, PC to process her Aid and Attendance application.

66.

In December 2012 and January 2013, Ms. McClane was unable to pay the full rent of \$2,185.00, and was told to pay “what she could” so Ms. McClane paid partial rent. Her Aid and Attendance application was not approved by December 1, 2012 as promised. In February 2013, Holiday staff told Ms. McClane that she was required to pay the full rent. In response, Ms. McClane's daughter, Karen Marin, borrowed \$1,000.00 from her 401(k) retirement plan in order to help Ms. McClane cover February rent. Ms. Marin anticipates paying a tax penalty for early withdrawal from her 401(k). In March 2013, Ms. McClane took out a loan for \$6,000.00 at 10.1% interest in order to pay her March rent. In April 2013, Ms. McClane was unable to pay the full rent and meet her other financial obligations and she continues to fall behind each month.

67.

Despite promises that her application would be approved in twenty-eight days or no later than December 1, 2012, Ms. McClane did not receive approval of her Aid and Attendance application until August 2013. During that time she received past due notices from Vineyard Place and was unable to receive confirmation that her Aid and Attendance application was complete and in process.

68.

Ms. McClane suffers from anxiety related to the instability of her housing. For over eleven months she lived in a constant state of worry and stress about her finances. Prior to moving into Vineyard Place, Ms. McClane had never paid her rent late in all her years as a tenant. She is currently under the care of a psychiatrist.

D. Martha Barney

69.

Ms. Barney has lived at Vineyard Place, a property owned and operated by Holiday, since November 2012. The highest level of education Ms. Barney completed is her three year Registered Nurse degree.

70.

Prior to moving into Vineyard Place, Ms. Barney lived independently in an apartment where she paid approximately \$1,000.00 per month in rent.

71.

In or around October 2012, Ms. Barney learned her rent was being raised and she began exploring other housing options. Ms. Barney began looking online and comparing different housing options. She does not recall registering at any website owned by Holiday, but after she conducted an online search, she began receiving phone calls from an individual named “Kimberly” from Vineyard Place. After three calls, each one more insistent, Ms. Barney agreed to their offer of a “free lunch” and a tour.

72.

On or around October 31 2012, Ms. Barney attended an arranged lunch with other residents of Vineyard Place. After lunch she was shown an apartment. At that time, Ms. Barney was not ready to move in and had just paid her November rent at her current apartment.

73.

At the time of the tour, Ms. Barney's total monthly income was \$1,900.00. The on-site manager, Kimberly Olinger, showed Ms. Barney an apartment with a monthly rent of \$2,084.00. When Ms. Barney explained that she could not afford the rent given her income, Ms. Olinger said approximately three to four times: “I can work magic” and “I can make miracles happen.” Ms. Barney was told that if she did not sign for the apartment that day she would lose the unit.

74.

After the tour, Ms. Olinger took Ms. Barney to her office and called an individual introduced to Ms. Barney as Dr. Glenn Osborne. During this call, Ms. Olinger handed Ms. Barney a pamphlet from the Center for **Elder** Veteran Benefits, PC and circled \$1,703.00 on the back. Ms. Olinger stated that Ms. Barney would be entitled to \$1,703.00 in monthly income when she was approved for Aid and Attendance benefits. During the call, Ms. Barney questioned who Dr. Osborne was but her questions were ignored. Ms. Olinger told Ms. Barney that Dr. Osborne had a 100% success rate in getting individuals approved for full Aid and Attendance benefits. At the end of the call, which lasted approximately fifteen minutes, Ms. Olinger handed Ms. Barney a contract with the Center for **Elder** Veteran Benefits, PC. Ms. Barney does not recall being told there was a charge for this service. After Ms. Barney moved in she received a bill from the Center for **Elder** Veterans Benefits, PC for \$700.00. She asked Ms. Olinger about the \$700.00 charge and was told she had to pay \$700.00 before she could file her Aid and Attendance application. Ms. Barney also called the Center for **Elder** Veterans Benefits, PC to inquire about the bill and spoke to Dr. Osborne. Dr. Osborne became very hostile towards Ms. Barney and claimed that he discussed his fee with her at length. Ms. Barney explained that she had no recollection of this conversation and would remember such a conversation because she could not afford a \$700.00 fee. Ultimately, Ms. Barney borrowed money from her brother so her Aid and Attendance application could be processed.

75.

Ms. Barney's application for Aid and Attendance was ultimately approved but well below the amount promised by Defendants. She currently receives \$1,221.00 per month in benefits rather than the \$1,703.00 she was promised. She has been unable to meet her monthly obligations and has gone further and further into debt.

76.

Ms. Barney has felt depressed as a result of the stress of no longer being able to meet her financial obligations. She is currently under the care of a counselor and taking anti-depressants to deal with her depression.

FIRST CLAIM FOR RELIEF (All Plaintiffs) (Elder Abuse ORS 124 et seq.)

Plaintiffs incorporate the paragraphs above and allege as follows:

77.

At all relevant times, Plaintiffs Richard Dickinson, Thelma Cramer, Shirley McClane, and Martha Barney were at least sixty-five years old, and therefore were “elderly” and “vulnerable” as those terms are defined in [ORS 124.100\(1\)](#).

78.

Defendants are liable for financial abuse of a vulnerable person, as provided by [ORS 124.100](#) and [ORS 124.110](#) in that:

- a. Defendants misrepresented to Plaintiffs their affiliation with the Veterans Administration and whether living in a Holiday residence would enhance their ability to receive Aid and Attendance benefits;
- b. Defendants took money from Plaintiffs in the form of increased rent after fraudulently inducing Plaintiffs to move into housing they could not afford;
- c. Defendants permitted another person to engage in the financial exploitation of Plaintiffs when they referred Ms. Barney and Ms. McClane to the Center for Elder Veteran Benefits, PC;
- d. Defendants misrepresented to Plaintiffs their eligibility for and amount of benefits they would receive under the Aid and Attendance benefit program;
- e. Defendants misrepresented the time in which Plaintiffs' applications for Aid and Attendance would be approved;
- f. Defendants misrepresented to Ms. Cramer what unit she would ultimately live in;
- g. Defendants misrepresented to Ms. McClane the availability of reimbursement for the \$700.00 she paid to the Center for Elder Veterans Benefits, PC;
- h. Defendants misrepresented to Ms. Barney the need to pay for the processing of her Aid and Attendance application;
- i. Defendants misrepresented to Mr. Dickinson the amount of rental incentives he received at the time of move-in;
- j. Defendants misrepresented to Mr. Dickinson and Ms. Cramer the status of their deferred rent and their obligation to pay those debts; and

k. Defendants misrepresented their expertise and knowledge regarding the Aid and Attendance enhanced pension program.

79.

As a result of Defendants' actions Plaintiffs have suffered economic damages in the form of moving costs, attorney fees, expenses incurred in pursuing their claim for benefits, increased rent, costs associated with the delay of their Aid and Attendance application processing, and loss of property.

80.

Plaintiffs are entitled to three times their economic and non-economic damages pursuant to [ORS 124.100\(2\)\(a\) and \(b\)](#).

81.

Defendants' actions have caused Plaintiffs to retain an attorney and incur fees and costs. Pursuant to [ORS 124.100\(1\)\(c\)](#), Plaintiffs are entitled to reasonable attorney fees.

SECOND CLAIM FOR RELIEF: (Unlawful Trade Practices Act ORS 646 et seq.) Count 1: Causing Confusion or Misunderstanding as to Affiliation, Connection or Association with Another, [ORS 646.608\(1\)\(c\)](#)

Plaintiffs incorporate the paragraphs above and allege as follows:

82.

Defendants knowingly caused confusion or misunderstanding with regard to their association or affiliation with the VA and led Plaintiffs to believe that they were being screened for eligibility for Aid and Attendance benefits by employees of the VA.

83.

Based on Defendants' misrepresentations, Plaintiffs believed they had been pre-approved for Aid and Attendance benefits by the VA prior to moving into a Holiday property. Specifically:

- a. Defendants misrepresented to Plaintiffs their affiliation with the Veterans Administration and whether living in a Holiday residence would enhance their ability to receive Aid and Attendance benefits;
- b. Defendants took money from Plaintiffs in the form of increased rent after fraudulently inducing Plaintiffs to move into housing they could not afford;
- c. Defendants permitted another person to engage in the financial exploitation of Plaintiffs when they referred Ms. Barney and Ms. McClane to the Center for **Elder** Veteran Benefits, PC;
- d. Defendants misrepresented to Plaintiffs their eligibility for and amount of benefits they would receive under the Aid and Attendance benefit program;
- e. Defendants misrepresented the time in which Plaintiffs' applications for Aid and Attendance would be approved;
- f. Defendants misrepresented to Ms. Cramer what unit she would ultimately live in;

- g. Defendants misrepresented to Ms. McClane the availability of reimbursement for the \$700.00 she paid to the Center for **Elder** Veterans Benefits, PC;
- h. Defendants misrepresented to Ms. Barney the need to pay for the processing of her Aid and Attendance application;
- i. Defendants misrepresented to Mr. Dickinson the amount of rental incentives he received at the time of move-in;
- j. Defendants misrepresented to Mr. Dickinson and Ms. Cramer the status of their deferred rent and their obligation to pay those debts; and
- k. Defendants misrepresented their expertise and knowledge regarding the Aid and Attendance enhanced pension program.

84.

Plaintiffs relied on Defendants' misrepresentations regarding the Aid and Attendance benefit in deciding whether to move into a Holiday property.

85.

Defendants were aware that Plaintiffs relied on their misrepresentations regarding the Aid and Attendance benefit in deciding whether to move into a Holiday property.

86.

As a direct result of Plaintiffs' reliance on Defendants' misrepresentations, Plaintiffs have suffered actual damages for economic losses and non-economic damages for mental and emotional distress.

87.

Under [ORS 646.638\(1\)](#), Plaintiffs are entitled to recover from Defendants' statutory damages in the amount of \$200, or their actual damages in the amount of \$300,000, including damages for emotional distress, whichever is greater.

88.

Defendants' actions have caused Plaintiffs to retain an attorney and incur fees and costs pursuant to ORS 608.638(3), therefore Plaintiffs are entitled to reasonable attorney fees.

Count 2: Making False or Misleading Representations of Fact Concerning the Reasons for, Existence of, or Amounts of Price Reductions, [ORS 646.608\(1\)\(j\)](#) (All Plaintiffs)

Plaintiffs incorporate the paragraphs above and allege as follows:

89.

Defendants knowingly misrepresented Plaintiffs' eligibility for Aid and Attendance benefits, whether living in a Holiday residence would enhance their eligibility for Aid and Attendance benefits, the time frame in which an application for Aid and Attendance benefits would be processed and the amount of benefits they could receive in order to induce them to move into housing they could not otherwise afford without the assistance of Aid and Attendance benefits.

90.

Plaintiffs relied on Defendants' misrepresentations regarding the Aid and Attendance benefit and would not have moved into a Holiday retirement community but for Defendants' statements regarding their eligibility and the timeframe in which their applications would be approved.

91.

Defendants were aware that Plaintiffs relied on the information they provided as to whether Plaintiffs qualified for Aid and Attendance benefits as well as the timeframe in which their applications for Aid and Attendance benefits would be approved. Each plaintiff made it clear to Holiday staff or personnel that they could not afford the monthly rent without the assistance of the Aid and Attendance benefit.

92.

As a direct result of Plaintiffs' reliance on Defendants' misrepresentations, Plaintiffs have suffered actual damages for economic losses and non-economic damage for mental and emotional distress.

93.

Under [ORS 646.638\(1\)](#), Plaintiffs are entitled to recover from Defendants statutory damages in the amount of \$200, or their actual damages in the amount of \$300,000, including damages for emotional distress, whichever is greater.

94.

Defendants' actions have caused Plaintiffs to retain an attorney and incur fees and costs pursuant to ORS 608.638(3), therefore Plaintiffs are entitled to reasonable attorney fees.

Count 3: Promises to deliver real estate goods or services within a certain period of time with intent not to deliver them as promised, [ORS 646.608\(1\)\(q\)](#) (Plaintiff Thelma Cramer)

95.

Defendants misrepresented to Thelma Cramer that she would be able to transfer from a studio apartment to a one-bedroom apartment for the same amount of rent after moving into a Holiday property.

96.

Ms. Cramer relied on Defendants' misrepresentations in deciding to move into a studio apartment at Rock Creek. Ms. Cramer would not have agreed to move into Rock Creek if she knew she could only transfer to a one-bedroom unit if she paid significantly higher rent.

97.

As a direct result of Plaintiff Cramer's reliance on Defendants' misrepresentations, Ms. Cramer has suffered actual damages for economic damages and non-economic damage for mental and emotional distress.

98.

Defendants were aware that Ms. Cramer relied on their misrepresentations regarding the option of transferring to a one-bedroom unit in deciding to move into a Holiday property.

99.

Under [ORS 646.638\(1\)](#), Ms. Cramer is entitled to recover from Defendants' statutory damages in the amount of \$200, or her actual damages in the amount of \$300,000, including damages for emotional distress, whichever is greater.

100.

Defendants' actions have caused Ms. Cramer to retain an attorney and incur fees and costs pursuant to ORS 608.638(3), therefore Plaintiff Cramer is entitled to reasonable attorney fees.

THIRD CLAIM FOR RELIEF: NEGLIGENT MISREPRESENTATION (All Plaintiffs)

Plaintiffs incorporate the paragraphs above and allege as follows:

101.

Defendants, a network of large national corporations, are in the business of operating senior retirement communities.

102.

At all relevant times, Holiday regularly provided information to prospective tenants about the Aid and Attendance benefit program and solicited them to submit applications to the VA by holding monthly seminars at its properties about Aid and Attendance benefits, sending out mailings to seniors, advertising Aid and Attendance benefits in local publications, and directly soliciting veterans and their surviving spouses. As part of these efforts Holiday held itself out as possessing superior knowledge and expertise in assessing eligibility and preparing applications for Aid and Attendance benefits. Plaintiffs relied on Holiday to exercise independent knowledge and judgment on their behalf regarding their applications for Aid and Attendance by agreeing that Holiday could assist them in applying for Aid and Attendance benefits, providing personal and other confidential information, including protected health information, requested by Holiday and its agents such as Dr. Osborne and Bob Elhard, and moving into Holiday properties at rents they could not afford without substantial Aid and Attendance benefits in amounts calculated by Holiday. As a result, there was and is a special relationship of trust and confidence between each Plaintiff and Holiday.

103.

Defendants supplied false information to Plaintiffs regarding the Aid and Attendance benefit, the time-frame in which their applications would be processed, and the amount of benefits they would be entitled to receive. This information was provided in the course of operating their business and for the guidance of Plaintiffs in their business transactions with Defendants.

104.

Defendants knew or should have known that several Plaintiffs were not eligible for Aid and Attendance benefits, that Plaintiffs were not likely to receive the amounts of benefits represented by Holiday, and that there was a substantial backlog of benefit applications at the VA so that Plaintiffs could not be approved for many months even if they were eligible. As a result, Defendants failed to exercise reasonable care or competence in providing information to Plaintiffs about the Aid and Attendance program.

105.

Plaintiffs suffered pecuniary loss in the form of increased rent, moving costs, depletion of their savings, attorney fees and incurred high-interest debt based on Defendants' advice.

FOURTH CLAIM FOR RELIEF: Breach of Contract:

(Plaintiffs Richard Dickinson and Thelma Cramer,)

Plaintiffs incorporate the paragraphs above and allege as follows:

106.

Defendants entered into agreements with Plaintiffs Dickinson and Cramer to defer rent during the period in which Plaintiffs' Aid and Attendance application was pending in exchange for entering into a rental agreement. The parties agreed on the essential terms, as reflected in the "Addendum VA" document thereby creating an express or implied in fact contract between them. Defendants, as a party to these agreements, had a duty to act in good faith in performing and enforcing them.

107.

Plaintiffs performed each of the obligations required of them by the contracts. Defendants failed to perform as required by the contracts, and breached the duty owed to Plaintiffs Dickinson and Cramer of good faith and fair dealing implicit in those contracts by commencing collection efforts against Plaintiffs and insisting on payment of all deferred payments.

108.

By not acting in good faith, Defendants failed to meet the reasonable expectations they gave Plaintiffs when the contracts were formed. Defendants failed to waive its right to collect past deferred rent amounts, all to the damage of Plaintiffs.

FIFTH CLAIM FOR RELIEF (All Plaintiffs)

(Declaratory Relief)

Plaintiffs incorporate the paragraphs above and allege as follows:

109.

The Arbitration and Liability agreement provides, among other things, that all disputes between Plaintiffs and Holiday - with the exception of eviction proceedings - must be submitted to arbitration pursuant to the Rules of the American Arbitration Association, that disputes concerning arbitrability also are to be decided by arbitration, that Plaintiffs share equally in the arbitration fees “unless found to be indigent,” that Plaintiffs waive the right to recover attorney fees or punitive damages, and that there is a cap on the total non-economic damages they can recover. It is unknown if all of the Plaintiffs executed an Arbitration and Liability addendum. To the extent such executed documents exist, both the agreement to arbitrate disputes (the “arbitration agreement”) and the agreement to submit arbitrability disputes to arbitration (the “jurisdiction clause”) are substantively and procedurally unconscionable.

110.

Each of the arbitration agreements and the jurisdiction clauses, if executed, are procedurally unconscionable in that:

- a. They are standardized contracts of adhesion, presented to Plaintiffs without any ability to negotiate them; in fact, the arbitration agreement expressly states that if “the [prospective tenant] chooses not to agree to these provision, you understand that you have the right and the choice to seek residence at another retirement residence if you wish;”
- b. They were presented to Plaintiffs, who are **elderly** and highly vulnerable persons, without explanation and as one of many sections of a large package of complex documents;
- c. They are included in an “addendum” which itself has multiple pages and highlight only sentences regarding limitations on non-economic and punitive damages. In particular, the jurisdiction clause was buried under the heading “Additional Provisions” and was neither highlighted nor otherwise conspicuous; and
- d. They were given to Plaintiffs to sign without any explanation of the consequences of agreeing to arbitrate or to the jurisdiction clause during a high pressure sales pitch which emphasized the incentives, deferrals, and discounts that Holiday would give them if they signed immediately and with the representation that these benefits could be lost if they did not agree to sign now.

111.

Each of the arbitration agreements and the jurisdiction clause, if executed, is substantively unconscionable in that:

- a. They represent that arbitration is “generally a quicker, more efficient and less expensive means to resolve disputes” despite the fact that (i) filing fees for the American Arbitrators Association generally are higher than those of a court, (ii) the parties are required to pay the fees and costs of an arbitrator, which cannot be waived by the American Arbitration Association, and (iii) the addendum provides for full discovery under the Rules of Civil Procedure, making the arbitration proceeding no less complex or burdensome than litigation;
- b. They require each party to bear its own attorney fees and costs and to waive any statutory or other right to recover such fees and costs, which has a disproportionate effect on individuals of modest means such as Plaintiffs;
- c. They require each party to bear one-half of the arbitrator's fee and costs “unless you are proven to be indigent,” with no definition of that term;
- d. They specifically apply to claims in tort, including personal injury, and require that recovery of non-economic damages be limited to \$250,000, and waive any right to recover punitive damages;

e. They waive the benefits of the collateral source rule by providing only for recovery of “net economic damages,” and make no exception for situations in which a third party pays or asserts a lien or otherwise has a right to receive a portion of any such recovery;

f. They contain a broad confidentiality clause which gives an unfair advantage to Holiday, which is a “repeat offender” and will be familiar with the arbitrators and have inside knowledge of proceedings involving similar disputes. In addition, the confidentiality clause prohibits tenants such as Plaintiffs from “discussing the specifics of the dispute with... any... government entity,” thereby preventing them from obtaining redress through agencies which protect the interests of consumers, veterans, or **elderly** persons.

g. They cover all types of claims which might be brought by tenants such as Plaintiffs, but exclude from arbitration eviction proceedings which only could be brought by Holiday; and

h. They say that arbitration is a way to resolve disputes without a court or jury, but contain no explanation of a prospective tenant's right to a court or jury trial or the consequences of waiving that right.

112.

Each of the factors alleged above, as applied specifically to the jurisdiction clause, render that provision substantively unconscionable. The jurisdiction clause is also independently unconscionable due to the extra delay and expense inflicted on **elderly** persons and the lack of explanation of what it means to present issues of enforceability to an arbitrator who has a financial interest in holding onto a case, as opposed to a neutral judge or jury.

113.

There is a present, actual, and justiciable controversy between the Plaintiffs who executed the arbitration addendum as to the validity of the arbitration agreement and of the jurisdiction clause. Those Plaintiffs who executed the arbitration addendum are entitled to a declaration as follows:

- a. The jurisdiction clause is unconscionable under the Oregon law of contracts;
- b. The arbitration agreement is unconscionable under the Oregon law of contracts;
- c. Neither the jurisdiction clause nor the arbitration agreement is valid or enforceable as to Plaintiffs; and
- d. This Court has jurisdiction over Plaintiffs' claims and Plaintiffs are entitled to pursue them in this Court.

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. On the First Claim for Relief, damages in the amount of \$1,200,000 itemized as follows: Plaintiff Richard Dickinson \$300,000, Plaintiff Thelma Cramer \$300,000, Plaintiff Shirley McClane \$300,000, and Plaintiff Martha Barney \$300,000;
- B. On the Second Claim for Relief, damages in the amount of \$1,200,000 itemized as follows: Plaintiff Richard Dickinson \$300,000, Plaintiff Thelma Cramer \$300,000, Plaintiff Shirley McClane \$300,000, and Plaintiff Martha Barney \$300,000;
- C. On the Third Claim for Relief, the amount of \$1,200,000 itemized as follows: Plaintiff Richard Dickinson \$300,000, Plaintiff Thelma Cramer \$300,000, Plaintiff Shirley McClane \$300,000, and Plaintiff Martha Barney \$300,000;

- D. On the Fourth Claim for Relief, damages in the amount of \$25,000 each awarded to Plaintiff Dickinson and Plaintiff Cramer;
- E. On the Fifth Claim for Relief, an order declaring that the jurisdiction clause and arbitration agreement in this matter is unconscionable and unenforceable;
- F. Plaintiffs will seek to amend their complaint to add a claim of punitive damages pursuant to [ORS 31.725](#);
- G. An award of costs and expenses in this litigation, including, but not limited to, reasonable attorney's fees; pursuant to [ORS 124.100](#), and [ORS 646.638\(3\)](#);
- H. For such other relief as may be just and equitable; and
- I. Plaintiffs demand trial by jury.

DATED this day of August 2013

Respectfully submitted,

Andrea N. Ogston, OSB # 053360

Legal Aid Services of Oregon

921 SW Washington St Ste 500

Portland OR 97205

Of Attorneys for Plaintiff

P:503-224-4086/F:503-295-9496

andrea.ogston@lasoregon.org

Carolyn M. Norton, OSB #111623

Oregon Law Center

921 SW Washington St Ste 516

Portland OR 97205

P:503-473-8322/F:503-295-0676

cnorton@oregonlawcenter.org

of Attorneys for Plaintiffs

Trial Attorneys: Andrea N. Ogston

Carolyn M. Norton

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.