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WILLIAM DESIMONE, as executor of the Estate  
of EVELYN DESIMONE, deceased, individually  
in such capacities and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

SPRINGPOINT SENIOR LIVING, INC.,  
SPRINGPOINT AT MONROE, INC.,  
SPRINGPOINT AT STONEBRIDGE AT  
MONTGOMERY, INC. SPRINGPOINT AT  
CRESTWOOD, SPRINGPOINT AT MEADOW  
LAKES, INC., SPRINGPOINT AT MONROE  
VILLAGE, INC., and SPRINGPOINT AT  
NAVESINK HARBOR, INC.

Defendants.

:  
: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION  
: MIDDLESEX COUNTY

:  
: DOCKET NO. MID-L-4958-13

:  
: CIVIL ACTION

:  
: **AMENDED CLASS ACTION**  
: **COMPLAINT**

**AMENDED CLASS ACTION COMPLAINT**

Plaintiff William DeSimone ("Plaintiff"), a citizen and resident of the State of New  
Jersey, acting in his capacity as executor of the estate of Evelyn DeSimone, deceased, on behalf

of both these estates (“Plaintiffs”) and other persons or estates similarly situated by way of Class Action Complaint against the Defendants, jointly, severally and in the alternative, states the following:

### **I. Introduction**

1. This class action arises out of a consumer fraud scheme directed at one of New Jersey’s most vulnerable populations — its senior citizens. Since 2007, and perhaps even earlier, Defendant Springpoint Senior Living, Inc., (“**Springpoint**”), formerly known as “Presbyterian Homes & Services, Inc.”, targeted and took advantage of residents of five New Jersey elderly-only “continuing care communities” that Springpoint operates through subsidiary companies it wholly owns and controls. Many of Springpoint’s victims were and are in their seventies and older. At a time in their lives when these men and women should be respected, taken care of, and protected, they were instead preyed upon by a benevolent appearing, but actually sharply-operated, non-profit corporation that systematically victimizes susceptible seniors and their families.

2. Defendants, as set out herein, conceived of and executed a deceptive scheme that entices senior citizens and their loved ones to move into Springpoint’s continuing care communities by promising a 90 percent refund on Springpoint’s high entrance fees, then, when the refund becomes due, swindles them out of tens of thousands of dollars per family. In the initial stage of the process, when senior citizens, such as the late Evelyn DeSimone, decide to move from their homes into one of Springpoint’s attractive senior continuing care communities, they have to pass required health and psychological entrance exams which are administered by Springpoint’s agents. Once they are qualified to enter the community, these unwitting senior citizens and their

families are required to pay Springpoint a large “entrance fee” that ranges from \$84,000 to over \$700,000, depending on the family’s choice of facility and apartment (“living accommodation unit”).

3. Senior citizens and their families are at their most vulnerable when shopping for a continuing care community, owing to the large sums of money that families contemplate paying for care, the desire to find the best solution for their loved one, and the complex emotions (including guilt and sadness) felt by both prospective residents and their families at this profound life change to a family member.

4. Springpoint takes full advantage of this vulnerability by luring senior citizens and their families to sign up for one of their continuing care communities with misleading statements made orally, at point of sale interactions, and through Springpoint marketing and sales materials about the potential for a 90% refund of their entrance fee. Most critically, Springpoint does this through a disclosure statement required by state law, that states that selecting the “90 percent refundable” plan would ensure that 90% of the entrance fee (less amortizing deductions for assisted living and/or skilled nursing facility utilization) “AL/SN utilization” would be refunded to the resident’s estate or family when the resident died or moved to another facility.

5. However, residents and their families and decedent estates do not receive a 90% refund of the entrance fee paid less deductions for AL/SN utilization; they receive a mere fraction of that amount. This unconscionable business practice and fraud arises because Springpoint calculates the basis for the 90% refund not on the amount of the resident’s “Entrance Fee,” paid on entrance but rather upon the *lesser* amount of either the resident’s Entrance Fee or the next occupant’s Entrance Fee for the departing resident’s living unit. As a result, instead of the

substantial refund promised, families are refunded based upon a reduced Entrance Fee.

Springpoint failed to disclose this highly material “lesser than” caveat to families electing the 90% Refundable Plan option.

6. Defendants also routinely fail to disclose to prospective and new residents that Springpoint and Springpoint’s CCC Facilities could and did offer substantial and material economic incentives in order to attract prospective residents, respond to adverse real estate market conditions, and compete with other continuing care facilities. These economic incentives, which have no tie to health care costs, included substantial entrance fee discounts on the living unit prices and lengthy payment deferrals, which affect the amount and timing of refunds to residents departing from Springpoint’s continuing care communities.

7. Springpoint’s 90 % Refundable Plan Option, entrance fee discounts, and economic incentives adversely affect the amount and timing of the refund Plaintiffs and class members received and/or will receive in the future. Many Springpoint continuing care community residents and their families did not or will not get back 90 percent of their Entrance Fee, contrary to Springpoint’s representations, as the refund calculation is predicated on a lesser amount. Many more in the future will be similarly affected as a result of the Springpoint Defendants’ material wrongful acts and omissions.

8. In Mrs. DeSimone’s case, her family received 20 percent less in their refund than they were led to believe they would, due to the fact that Springpoint offered a 20 percent discount on Evelyn DeSimone’s living accommodation unit at the time it was relet in 2009.

9. Residents and their families or estates also were forced to wait longer to receive their partial 90 percent refund, owing to Springpoint offering economic incentives that permitted the

next occupant of the living accommodation unit to pay via promissory note with no cash down. This practice delayed refund payments for residents and their families or estates until the next occupant of the living unit had paid the promissory note in full.

10. Accordingly, this consumer class action seeks money damages and injunctive relief based upon Defendants' respective fraudulent and deceitful misrepresentations, fraudulent and deceitful omissions and other marketing misconduct that violated the New Jersey Continuing Care Retirement Community Regulation and Financial Disclosure Act, the New Jersey Consumer Fraud Act, and/or the common law of New Jersey.

### **PARTIES**

11. Plaintiff William DeSimone (Plaintiff) is an individual and citizen of the State of New Jersey residing at 27 Cherry Blossom Lane, Jamesburg, NJ 08831. Plaintiff is the son of Evelyn DeSimone, deceased ("Decedent DeSimone") and has duly qualified and is serving as the executor of her estate ("Decedent DeSimone's Estate").

12. Defendant Springpoint, formerly known as "Presbyterian Homes & Services, Inc.," is a New Jersey not-for-profit corporation headquartered at 13 Roszel Road, Suite C120, Princeton, New Jersey 08540. Springpoint is and was at all times material hereto in the business of owning, managing, and promoting senior citizen living facilities in New Jersey.

13. Defendant Springpoint at Crestwood, Inc. ("**Springpoint Crestwood**"), formerly known as "The Presbyterian Home at Crestwood, Inc.," is a New Jersey not-for-profit corporation with corporate headquarters located at 13 Roszel Road, Suite C120, Princeton, New Jersey 08540. Springpoint Crestwood is a wholly owned subsidiary of Defendant Springpoint. At all times relevant hereto, Springpoint Crestwood was in the business of owning, operating, managing, and

promoting the Springpoint CCC facility known as “**Crestwood Manor,**” located at 50 Lacey Road, Manchester Township, NJ 08759. At all times material herein, Crestwood held itself out to the public, and registered itself with the New Jersey Department of Community Affairs (“**DCA**”), as being the “Provider” of Continuing Care Retirement Community known as “Crestwood Manor”.

14. Defendant Springpoint at Meadow Lakes, Inc. (“**Springpoint Meadow Lakes,**”) formerly known as “The Presbyterian Home at Meadow Lakes, Inc.,” is a New Jersey not-for-profit corporation with its corporate headquarters located at 13 Roszel Road, Suite C120, Princeton, New Jersey 08540. Springpoint Meadow Lakes is a wholly owned subsidiary of Defendant Springpoint. At all times relevant hereto, Springpoint Meadow Lakes was in the business of owning, operating, managing, and promoting the Springpoint CCC facility known as “**Meadow Lakes.**” Meadow Lakes is located partly in the Borough of Hightstown, New Jersey and partly in the Township of East Windsor, New Jersey, with a mailing address at 300 Etra Road, East Windsor, NJ 08520. At all times material herein, Springpoint Meadow Lakes held itself out to the public, and registered itself with DCA, as being the “Provider” of the Continuing Care Retirement Community “Meadow Lakes.”

15. Defendant Springpoint at Monroe Village, Inc., formerly known as “The Presbyterian Home at Monroe Inc.,” (“**Springpoint Monroe Village**”) is a New Jersey not-for-profit corporation with its corporate headquarters located at 13 Roszel Road, Suite C120, Princeton, New Jersey 08540. Springpoint Monroe Village is a wholly owned subsidiary of Defendant Springpoint. At all times relevant hereto, Springpoint Monroe Village was in the business of owning, operating, managing, and promoting the Springpoint CCC facility known as “**Monroe**”

**Village**” located at One David Brainerd Drive, Monroe Township, NJ 08831. At all times material herein, Springpoint Monroe Village held itself out to the public, and registered itself with DCA, as being the “Provider” of the Continuing Care Retirement Community “Monroe Village” (“**Monroe**”).

16. Defendant Springpoint at Stonebridge at Montgomery, Inc., formerly known as “The Presbyterian Home at Montgomery, Inc.,” (“**Springpoint Stonebridge**”) is a New Jersey not-for-profit corporation with its corporate headquarters located at 13 Roszel Road, Suite C120, Princeton, New Jersey 08540. Springpoint Stonebridge is a wholly owned subsidiary of Defendant Springpoint. At all times relevant hereto, Springpoint Stonebridge was in the business of owning, operating, managing, and promoting the Springpoint CCC facility known as “**Stonebridge at Montgomery**,” located at 100 Hollinshead Spring Road, Skillman, NJ 08558. Springpoint held itself out to the public and registered itself with DCA as being the “Provider” of the Continuing Care Retirement Community “Stonebridge at Montgomery” (“**Stonebridge**”).

17. Defendant Springpoint at the Atrium, Inc., formerly known as “The Presbyterian Home at Red Bank Inc.” (“**Springpoint Atrium**”), is a New Jersey not-for-profit corporation with its corporate headquarters located at 13 Roszel Road, Suite C120, Princeton, New Jersey 08540. Springpoint Atrium is a wholly owned subsidiary of Defendant Springpoint. It is also the successor by merger to American Baptist Estates of Red Bank, Inc., through a merger effectuated on or about June 30, 2006. At all times relevant hereto, Springpoint Atrium was in the business of owning, operating, managing, and promoting the Springpoint CCC facility known as “**The Atrium at Navesink Harbor**”(“**Atrium**”), located at 40 Riverside Avenue Red Bank, NJ 07701. At all times material herein Springpoint Atrium held itself out to the public, and registered itself

with DCA, as being the “Provider” of the Continuing Care Retirement Community “The Atrium at Navesink Harbor.”

18. At all times material herein, Springpoint managed the following five (5) affiliated continuing care communities (“CCC”) in New Jersey: Crestwood Manor, Meadow Lakes, Monroe Village, Stonebridge at Montgomery and The Atrium at Navesink Harbor (collectively “**Springpoint CCC Facilities**”) through five wholly-owned subsidiaries: Springpoint Crestwood, Springpoint Meadow Lakes, Springpoint Monroe Village, Springpoint Stonebridge, and Springpoint Atrium (collectively, “**Springpoint CCC Subsidiaries**”).

19. At all relevant times, Defendants Springpoint and Springpoint CCC Subsidiaries acted by and through their respective officers, employees, servants, attorneys, or agents, actual, apparent and/or ostensible, all of whom were then and there acting within the course and scope of their authority, duties and employment, actual or apparent.

20. At all times material herein, Defendant Springpoint dominated and controlled the five Springpoint CCC Subsidiaries through control over their respective governing bodies, most of which are comprised principally of the same individuals who control and direct Springpoint. Springpoint directs, dominates and controls the management and marketing of the Springpoint CCC Facilities, rendering them alter egos or agents of Springpoint, through management contracts with each of the Springpoint CCC Subsidiaries.

21. At all times material herein, Springpoint’s management made, directed, and controlled the marketing and disclosure policies and decisions relating to the five Springpoint CCC Subsidiaries and five Springpoint CCC Facilities.



## **FACTS COMMON TO CLASS CERTIFICATION AND ALL COUNTS**

### **A. Evelyn DeSimone and Her Family Are Deceived by Springpoint's 90% Refundable Plan Scam**

22. In the fall of 2008, Evelyn DeSimone was 78 and living alone in an apartment in Bergen County, New Jersey. Mrs. DeSimone and her children, including Plaintiff, decided that due to her advanced age and declining physical and mental health, which included macular degeneration, balance issues, and memory losses, she should give up her apartment and move into a continuing care retirement facility. This would permit her to live in a community that could provide the sort of care and support she would need as she grew older. Mrs. DeSimone's family determined that a retirement facility in New Jersey located near Mrs. DeSimone's oldest son, Plaintiff William DeSimone, was preferred over similar facilities located in New York and Connecticut that were nearer to her other two children.

23. At this time in 2008, Mrs. Elizabeth Savitsky ("Savitsky"), who is Mrs. DeSimone's daughter and held a power of attorney from Mrs. DeSimone to manage her affairs, took on the responsibility to make, with her mother's consent, the financial and other arrangements necessary to move Mrs. DeSimone into a continuing care retirement facility.

24. Decedent and members of her family visited Springpoint Monroe Village in Monroe Township, New Jersey, during the early fall of 2008. Springpoint and Springpoint Monroe Village provided the DeSimone family with information on the facility's services and amenities, along with its fees and charges, including materials touting the purported advantage of Monroe Village's 90% Refundable Plan.

25. Springpoint Monroe Village's sales presentation and statutory disclosure statement

disclosed there were two Entrance Fee options available, the “Traditional Plan” and the “90% Refundable Plan.” However, Springpoint Monroe Village’s sales personnel’s pitches and explanations heavily emphasized and focused on selling the 90% Refundable Plan, emphasizing that if Mrs. DeSimone did not like living there or died after moving in, she or her estate would get back 90% of the Entrance Fee she paid, reduced by any charges for time she spent residing in the Monroe Village’s skilled nursing or assisted living facility (“**AL/SN Utilization Deductions**”).

26. However, the presentations and disclosure statement failed to disclose that any refund owed the DeSimone family would be calculated not on the amount Mrs. DeSimone paid, but rather the lesser amount of either her entrance fee or the entrance fee paid by the subsequent occupant of her living accommodation unit. Nor did the sales presentations, discussions with Springpoint’s agents, or Springpoint Monroe’s Village’s disclosure statement disclose that any refund owed DeSimone could be reduced either by the amount a subsequent occupier of the unit paid, or by financial incentives Springpoint provided to subsequent occupiers of the unit.

27. By early October 2008, the DeSimone family decided upon Springpoint Monroe Village for their mother. Ms. Savitsky believed the facility looked clean and appeared appealing. The DeSimone family also liked the fact that Monroe Village offered levels of healthcare in case Mrs. DeSimone should need more specialized care in the future. Finally, Ms. Savitsky and Plaintiff DeSimone felt the 90% Refundable Plan was compelling and affordable because even though the entrance fee was “hefty,” Springpoint told the DeSimone family that the option paid for future healthcare, and was 90 percent refundable in case Mrs. DeSimone did not like Springpoint Monroe Village and ever wanted to move. Springpoint’s 90% Refundable Plan was

a major factor in the DeSimone family's decision to enroll their mother there, given that the "Ashley" model Monroe Village living unit they were interested in required a \$159,000 Entrance Fee in October 2008, an amount that comprised a substantial portion of Mrs. DeSimone's assets.

28. On or about October 13, 2008, Mrs. DeSimone completed and submitted a Confidential Resident Application to Springpoint, then known as Presbyterian Home & Services, Inc. to begin her application process. The application contained an area labeled "Financial Plan" with a checkbox for "90% Refundable" and one for "Traditional." The form does not contain any explanation or qualification for the term "90% Refundable," and no explanation that the refund is based on the lesser of two amounts. At or about that time, Mrs. Savitsky, through Mrs. DeSimone's power of attorney, gave Springpoint Monroe Village a check drawn on Mrs. Simone's checking account in the sum of \$15,900 to cover Monroe Village's application fee and the deposit due on her living unit. The remainder of the \$159,000 Entrance Fee was paid on or about January 30, 2009, prior to Mrs. DeSimone moving into Monroe Village.

29. During November and December 2008, Mrs. DeSimone underwent medical, mental and personal care functional assessments by Springpoint Monroe Village's consultants, who then approved her application to enter Monroe Village as an independent living resident.

30. Throughout the application process, and immediately prior to signing the Refundable Residence and Care Agreement on or about December 22, 2008, Mrs. Savitsky spoke with Springpoint's Monroe Village's Director of Marketing, Shannon Grieb ("Grieb") about details concerning her mother's upcoming move to Springpoint Monroe Village. Mrs. Savitsky inquired what would happen if her mother died, or wanted to move out in a year. Ms. Grieb responded that 90% of the \$159,000 Entrance Fee would be returned, less any nursing care deductions. Ms.

Grieb also stated that that the Entrance Fee was for health care costs and not a real estate transaction.

31. In emails between Ms. Grieb and Mrs. Savitsky, Ms. Grieb made no mention of any discounts or economic incentives offered other potential residents, or the fact that the amount of the 90% Refundable plan was dependent on the re-letting of the living unit – which in essence is a sale or lease of real estate that is subject to the vagaries of the real estate market.

32. Ms. Grieb was very explicit and clear in stating that entering Springpoint Monroe Village was not a real estate transaction, that the entrance fee and its deductions were to pay for future healthcare only, and that nothing could be declared for a property tax rebate or any other tax issues based on taking up residence and paying the Entrance Fee. Mrs. Savitsky understood from Monroe Village’s sales representations that this transaction was not a real estate transaction, that the entrance fee was for future AL/SN utilization services and the monthly fee was like a lease payment. Accordingly, Mrs. Savitsky did not understand or assume that the Entrance Fee amount refund would be based on future occupancy. Indeed, none of the Springpoint employees Mrs. Savitsky spoke with told her the 90% refund would be contingent upon the sale or reletting of the living accommodation unit apartment after her mother left the facility.

33. A financial brochure Springpoint provided to Mrs. Savitsky during the application process was titled “Monroe Village: Financial Features”. The brochure, which Mrs. Savitsky read and relied upon in deciding to move her mother into Monroe Village makes no mention of the fact that the 90% refund might be based on the entrance fee paid by *a subsequent occupant*. The brochure further does not state or suggest that Springpoint Monroe Village might offer

discounts on living units or offer other financial incentives to lower prices for subsequent occupants. The pamphlet states, "If the resident never moves to either assisted living or skilled nursing on a permanent basis, then 90 percent of the entrance fee will be refunded to the resident's estate once the apartment has been re-occupied." Mrs. Savitsky remembered this "Financial Features" document because she took note of its description of Springpoint's Expanded Services Program ("ESP"), a program purportedly providing comprehensive supportive care for seniors in independent living units. The ESP offering appealed to Mrs. Savitsky in case her mother should ever need such supplementary services, and Mrs. Savitsky asked Ms. Grieb about it. Further, Mrs. Savitsky asked Ms. Grieb about the various percentages listed as deductions from an Entrance Fee for Assisted Living and Skilled Nursing. During and throughout these interactions, Springpoint's Monroe Village sales and administrative staff never once informed or advised Mrs. Stavitsky that the 90% refund was subject to reduction based upon where a subsequent occupant paid as Entrance Fee.

34. Springpoint also pressured prospective residents to sign quickly. A Monroe Village hold notice dated December 12, 2008 from Springpoint stated that the wait list deposit had been received and that to hold the apartment, the Residence and Care Agreement had to be signed within 15 days.

35. As part of the application and facility resident entrance process, Springpoint Monroe Village's marketing personnel gave Mrs. DeSimone and her daughter copies of Monroe Village's statutory disclosure statement and copies of Springpoint Monroe Village's Residency and Care Agreements, including one for the Monroe Village 90% Refundable Resident and Care Agreement.

36. Springpoint Monroe Village's statutory disclosure statement disclosed the following about the 90% Refundable Plan:

The 90% Refundable plan requires the payment of a higher Entrance Fee and allows for up to 90% of the Entrance Fee to be refunded. Payment of the refund shall be made upon the execution of a new residence agreement for the Living Accommodation and expiration of the rescission period of the incoming resident unless a current community resident transfers to the Resident's Living Accommodation upon its vacancy, in which case payment of the refund shall be upon payment of a new entrance fee and expiration of the rescission period of an incoming resident occupying the current resident's previous living accommodation.

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The refundability of the Entrance Fee is described in detail in Section VI of the attached Residence & Care Agreements

37. Section VI is located on page 20 of the 90% Refundable Residence & Care Agreement and describes the terms for the refund of 90% of the entrance fee following termination after occupancy. This section of the contract, contrary to all other prior representations and descriptions by Springpoint, including the Disclosure Statement and the responses Mrs. Savitsky's questions on the 90% refund, provided that the 90% refund would be paid without interest based on the *lesser of the original entrance fee paid or the subsequent resident's entrance fee*, less deductions for amortization payments for any time the resident occupied a bed in the facility's assisted living or skill nursing sections.

38. The June 30, 2008 Monroe Village Disclosure Statement the DeSimone family received made no mention of the fact the 90% Refundable Plan would be based upon the lesser amount of either Mrs. DeSimone's entrance fee (i.e.- \$159,000) or the entrance fee a subsequent occupant of her independent living unit paid as an Entrance Fee.

39. The disclosure statement did not inform the DeSimone family that Springpoint's management had already begun to offer, and/or might in the future offer, Entrance Fee discounts and other economic incentives (such as accepting low or no interest promissory notes instead of cash payment of the Entrance Fee) in order to lure in senior citizen residents and bolster Springpoint occupancy rates. These discounts and economic incentives were part of Springpoint's aggressive marketing to senior citizens, discussed below.

40. Had Mrs. Savitsky been aware of the facts through proper and timely disclosure, Mrs. Savitsky would not have executed the Refundable Residence and Care Agreement on her mother's behalf and paid any monies to Springpoint Monroe Village.

41. On or about December 22, 2008, Mrs. Savitsky, pursuant to her power of attorney, executed Springpoint Monroe Village's 90% Refundable Residence and Care Agreement on behalf of her mother in connection with her mother's admission to Monroe Village. The Agreement acknowledged that Mrs. DeSimone and Mrs. Savitsky had received a copy of the Monroe Village Disclosure Statement dated June 30, 2008. Mrs. Savitsky read and relied upon the disclosure statement as well as Springpoint's other sales materials given her and the oral explanations about the refunds she had received in response to her questions.

42. On or about January 20, 2009, before Mrs. DeSimone was able to move into her independent living unit at Monroe Village, she fell on ice and broke her hip. Mrs. DeSimone's injury was serious enough that she was hospitalized. When this event was discussed with the Springpoint Monroe Village's marketing personnel, even though they knew that decedent was incapable at that time of independent living due to her broken hip, they suggested that Mrs. DeSimone pay the balance of her \$159,000 Entrance Fee outstanding, take possession of her

independent living unit in February 2009, and obtain the physical therapy and rehabilitation for her hip at Monroe Village's Skilled Care Nursing Center ("SCNC"). Springpoint was given permission to discuss Mrs. DeSimone's condition with the attending hospital doctors, which Springpoint Monroe Village's staff did.

43. Unaware that this suggestion was motivated by Springpoint's need to make the sale to bolster Springpoint Monroe Village's falling occupancy rate, the family agreed with this suggestion, paid Springpoint Monroe Village the balance due on the \$159,000 Entrance Fee amount and took possession of the unit. At the same time, on February 27, 2009, the DeSimone family moved Mrs. DeSimone into Monroe Village's SCNC, where she resided until her death on April 10, 2010. At no time did she ever personally occupy her independent living unit for which she paid Springpoint Monroe Village a \$159,000 Entrance Fee, although her family moved her furniture and other effects into the unit in late February for what turned out to be a brief period of time.

44. One week after Springpoint Monroe Village employees pushed to have Mrs. DeSimone take occupancy of her unit, on March 3, 2009, Springpoint Monroe Village Executive Director John Rauner sent Mrs. Savitsky a letter regarding Mrs. DeSimone's condition, stating that she was not physically capable of independent living and that she would be confined to the Health Care unit at SCNC. Rauner also told Mrs. Savitsky that her mother's independent living unit had to be vacated within 30 days. However, Rauner's letter makes no mention of the true terms of the 90% refundable option, or that a refund would be dependent on the reletting of the apartment. Mrs. DeSimone's children moved out her furniture and personal effects, and her Ashley unit became available for relet.



45. On July 2, 2010, three months after Mrs. DeSimone's death, Plaintiff received a check from Monroe Village in the amount of \$80,136.00, which amount purportedly represented the amount due Mrs. DeSimone's estate under the 90% Refundable Plan. This amount was approximately 50% of the Entrance Fee paid by Mrs. DeSimone's family.

46. Plaintiff, in his capacity as Executor of his mother's estate, asked Springpoint's Monroe Village's management for an explanation of the refund amount. Springpoint Monroe Village pointed to the provision buried on page 20 in the lengthy Residence and Care Agreement which stated that a the 90% refund was based on the lesser of the entrance fee paid by his mother or the entrance fee paid by the subsequent resident. In Mrs. DeSimone's case, although the original entrance fee was \$159,000.00, the subsequent resident's entrance fee was only \$127,000.00, a substantially reduced amount that was due to a 20% discount on the entrance fee that Springpoint was offering in 2009 to attract new residents. Mrs. DeSimone's refund had been calculated on this reduced amount.

47. On July 26, 2010, Tim Alter, Director of Resident Services, responded to Plaintiff that the reason that the amount of their refund was less than what had been represented to the DeSimone family at the time they were shopping for continuing care facilities was due to Springpoint Monroe Village's marketing people's "cutting prices to just make a sale." Moreover, Mr. Alter explained that some of the entrance fees had been slashed by 20%, and that in order to make sales, Monroe Village had accepted and continued to accept Entrance Fees that were paid by no cash upfront, with a promissory note as payment. Under these circumstances, the refund would not be paid until the subsequent resident paid the note. Plaintiff's conversation with Mr. Alter also revealed that there were numerous other residents of Monroe complaining about the

discounted Entrance Fees and economic incentives that were adversely impacting residents and their families and estates.

48. On or about November 4, 2010, Plaintiff met with Mr. Rauner in order to express his dissatisfaction with the method of refund calculations based on the succeeding occupant's reduced entrance fee sales price. During the meeting, Plaintiff asked for a refund based upon the \$159,000 in non-discounted entrance fee his mother had paid. Rauner refused, saying that Springpoint Monroe Village stood by the Residence and Care Agreement's provision – even if this meant that the original resident lost money. According to Mr. Rauner, Springpoint's policy as to what its marketers and marketing communicated with prospective residents throughout the sales process was “irrelevant and the contract controlled.”

49. Neither Messrs. Alter or Rauner denied that a 20% discount was offered on entrance fees for other customers. They also did not deny that the marketing materials contradicted the Residence and Care Agreement.

50. To date, Defendants have not refunded Plaintiff an amount based upon his mother's Entrance Fee of \$159,000, to decedent's estate damage and loss.

#### **B. Springpoint's Business and Management**

51. Springpoint was founded in 1916 by a group of Presbyterian ministers to help provide non-profit housing to senior widows and single women in their congregations throughout New Jersey. Springpoint has transformed from its charitable beginnings into a multi-million-dollar enterprise with approximately 3,500 residents and 1,500 employees. It owns and operates numerous senior citizen communities located throughout the State of New Jersey, including, as

of the filing of this action, the five Springpoint CCC Facilities, along with eighteen (18) affordable housing communities.

52. In Springpoint's annual Internal Revenue Service ("IRS") Form 990 filings, it describes itself as "a leading housing, hospitality, and healthcare services provider recognized for its quality of services and *as a reliable source of information that allows seniors to make the best possible choices* concerning their housing, health and wellness, and financial planning."

53. Springpoint is managed by group of professional managers, including, during the times material herein, the following individual officers (collectively "**Springpoint Officers**") who, on information and belief, each played a material role in determining and implementing Springpoint's policies and disclosures relating to the Entrance Fees that are the subject of this case:

- (a) Mr. Gary T. Puma, ("**Puma**"), President and Chief Executive Officer;
- (b) Mr. Anthony A. Argondizza ("**Argondizza**"), Senior Vice President, Operations;
- (c) Maureen E. Cafferty, Esquire ("**Cafferty**"), Senior Vice President, General Counsel;
- (d) Ms. Laura T. Kieslowski ("**Kieslowski**"), Vice President, Sales and Marketing;
- (e) Ms. Marybeth Kopec ("**Kopec**"), Vice President, Finance;
- (f) Mr. Garrett Midgett III ("**Midgett**"), Senior Vice President and Chief Financial Officer;
- (g) Charles R. Mooney ("**Mooney**"), Senior Vice President and Chief Operating Officer.

54. Despite Springpoint's purported non-profit status, each of the Springpoint Officers received very substantial and lucrative compensation packages which collectively totaled over \$11.3 million for years 2009-2011. The compensation packages were based on Springpoint's

financial operating results and paid out of its revenues. For example, of Springpoint's 2010 revenues of \$116 million, Springpoint paid out **\$2 million** alone in Springpoint Officers' salary and bonus, not counting amounts towards deferred compensation and retirement.

55. The following table lists each of the seven (7) Springpoint Officers' respective combined salary and bonuses and total compensation, including retirement and deferred compensation, for the years 2009, 2010 and 2011. The table's data is derived from Springpoint's Internal Revenue Service Form 990 filings' Schedules "O", which tax returns are or were posted on Springpoint's website:

Year	2009		2010		2011	
Springpoint Officer	Salary & bonus	Total compensation including retirement and deferred compensation	Salary & bonus	Total compensation including retirement and deferred compensation	Salary & bonus	Total compensation including retirement and deferred compensation
Puma	\$538,588	\$875,680	\$619,770	\$1,060,044	\$658,351	\$3,154,259
Argondizza	217,538	263,816	267,812	317,752	288,139	334,363
Cafferty	248,039	298,553	260,507	314,926	273,908	345,975
Kislowksi	215,501	268,239	249,073	292,138	263,132	302,719
Kopec	205,120	260,036	206,869	264,548	204,353	262,977
Midgett	285,207	380,497	310,777	405,099	325,125	612,320
Mooney	353,597	487,173	344,199	459,573	352,645	392,595

56. Springpoint uses its origins as a charitable institution, its non-profit status and purported benevolent philosophy in all of its marketing and sales materials to hold itself forth to the public as an institution that is trustworthy, scrupulous, and honest. Springpoint and each of its Springpoint CCC Subsidiaries, however, exploited this cultivated façade of trustworthiness and honesty in order to prey upon, deceive and take advantage of the elderly residents of Springpoint CCC Facilities, including Plaintiffs, decedents and others similarly situated.

### C. The Springpoint CCC Facilities

57. The five Springpoint CCC Facilities are continuing care retirement communities that are subject to and governed by the provisions of the New Jersey Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330, *et seq.* (“**Retirement Community Act**”).

58. The Springpoint CCC Facilities are designed to provide New Jersey senior citizens who can afford to pay the communities’ substantial upfront entrance fee and monthly service fees with a continuous spectrum of living and health accommodations as their needs and circumstances require. For active and healthy adults who are 62 years of age or older, these facilities offer residents an independent residential living unit (what Springpoint’s contracts refer to as “**living accommodations**”), community spaces and facilities, meals, activities, and other services. If a resident develops an illness or disability rendering him or her unable to live independently, Springpoint CCC Facilities then offer assisted living, skilled nursing, medical care, and other health-related services and living accommodations for its residents.

59. Each Springpoint CCC Facility charges its residents for these residential living accommodations, meals, activities and services through several standardized fees:

(a) “**Entrance Fees.**” Springpoint describes this fee in its contracts and disclosures as a one-time payment of money in full or partial consideration for acceptance as a “Resident” in a Springpoint CCC facility. Entrance fees vary in amount based upon the particular Springpoint CCC facility and the size and location of the resident’s living unit. (See table of entrance fees *infra.*) Each Springpoint CCC Facility offered and offers incoming residents two (2) options

regarding refunds of these entrance fees upon their leaving the community:

i)           **“Traditional Plan.”** This option purportedly enables a resident to pay a lower Entrance Fee amount than what the resident in the same living accommodation unit would pay under the other available option, the “90% Refundable Plan.” Under the Traditional Plan, the portion of their Entrance Fee that will be refunded to a living resident on departure declines over time according to a monthly amortization schedule that is based upon where a resident occupied a bed: either (i) in an independent living accommodation unit or occupied a bed in the facility’s (ii) assisted living section or (iii) its skilled nursing section.in the facility’s Health Care Center. In situations where the resident dies after expiration of a sixty-day rescission period, the Entrance Fee is then deemed fully earned by the Springpoint CCC facility.

ii)           **“90% Refundable Plan.”** This option requires payment of a significantly higher entrance fee amount for a unit than that required under the Traditional Plan. It purportedly allows the resident, or his or her estate, to receive a refund of up to 90% of the Entrance Fee paid regardless of whether he or she is living at the time of departing the Springpoint CCC Facility. Like the Traditional Plan, the amount of the refund under this plan declines according to an amortization schedule if a resident requires placement in a facility’s Health Care Center and can no longer live in their independent living unit. Like the Traditional Plan, the monthly amortization schedule is based upon where a resident occupied a bed: either (i) in an independent living accommodation unit or occupied a bed in the facility’s (ii) assisted living section or (iii) its skilled nursing section.in the facility’s

Health Care Center. The payment of the refund becomes due under the 90% Refundable Plan, generally, upon both the execution of a new residence agreement for the departing resident’s living accommodation unit and the expiration of the rescission period of the incoming resident. Springpoint CCC Facilities do not pay interest on any entrance fees they hold.

(b) “**Monthly Service Fees**”. These fees of several thousands of dollars a month are based upon the living accommodation unit model or type and the number of occupants. Monthly services vary in amount by Springpoint community. Generally the monthly fees increase annually.

(c) “**Other fees**”. These are fees residents are charged for activities, incidentals and medical care.

60. Springpoint CCC Facilities’ predominant sources of revenue are the entrance fees and monthly service fees charged to residents. While the amount of these fees has changed over the years, the substantial nature of these fees throughout the time relevant to this matter is illustrated in the following table depicting the range of these fees the Springpoint CCC facilities charged its residents in 2009:

2009						
	Traditional Plan		90% Refundable Plan		Monthly Fees	
	Lowest Single Occupancy	Highest Double Occupancy	Lowest Single Occupancy	Highest Double Occupancy	Lowest Single Occupancy	Highest Double Occupancy
Crestwood	69,000	165,000	99,500	230,000	2,168	5,120
Meadow Lakes	56,300	486,000	84,000	648,000	1,704	7,816
Monroe Village	60,250	235,000	89,600	349,000	2,463	5,146

Stonebridge	125,000	387,300	183,500	561,350	2,934	7,704
Atrium	94,900	462,750	146,000	702,500	2,167	6,015

**D. Springpoint’s Marketing Tactics, Occupancy Rates, Discounts, and Credit Rating.**

61. Springpoint’s CCC Facilities have become a large and lucrative business, and by the mid-2000s dominated Springpoint’s web site, annual reports, and marketing activities.

62. Springpoint and the five Springpoint CCC Subsidiaries market the Springpoint CCC Facilities in a misleading and aggressive manner by, among other sales methods, sending senior citizens throughout New Jersey misleading mailings and advertisements. The deceptions and unconscionable commercial practices contained in these mailings are separate but related to the deceptions and unconscionable commercial practices contained in Springpoint’s point-of-sale required disclosure statements and in Springpoint contracts concerning the 90% Refundable Plan. Defendants’ mailings and uninvited solicitations use extraordinary means to lure senior citizens to enter the Springpoint CCC Facilities and elect the 90% Refundable Option.

63. A number of Springpoint’s mailings and solicitations promise security and stability, stating:

(a) “These days, more than ever, security matters. Security for your healthcare, your finances, and for where you’ll live, now and in the years to come...Stonebridge is a place where your life can be effortless and your future can be worry-free.”

(b) “More than just a great life, living here means easier financial planning too. With predictable payments, the ease of a single monthly check and no more unexpected home repair




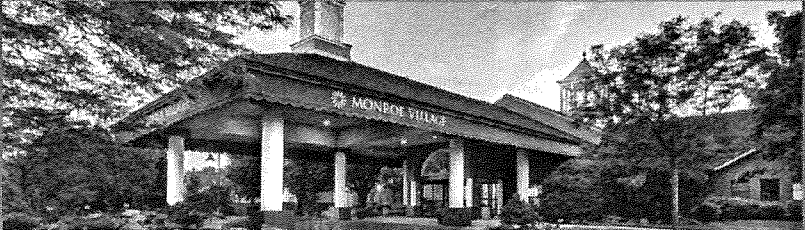
bills, Stonebridge is a place where you'll stay sheltered from financial ups and downs.”

64. Another Springpoint Stonebridge brochure further promises seniors that they will learn about “the security of lifelong care” at Stonebridge.

65. Springpoint also plays upon promises for financial security on their website. One of their marketing web pages for Monroe Village touted the “guaranteed” 90% refund plan, framing the issue in terms of financial fears of senior citizens: “We’re afraid of spending down our assets.” The web page entices seniors by describing “no riskier way to deal with assets than to wait too long... and be forced to spend down your life savings to provide the care you need.” This marketing collateral reinforces idea that the 90% refund plan is a solution to this problem. *See* <http://www.monroevillageonline.org/health-and-senior-services-central-nj.php>. (Figure “A”, highlighted area).

www.monroevillageonline.org/health-and-senior-services-central-nj.php

home Our Community Lifestyle Join Us Your Care Events Contact Us Springpoint Careers Helping Your Parents 877-586-1552

More comfortable than your Comfort Zone. More service, more security, more value.

Home > Helping Your Parents > How to Talk to your Parents

### Helping Your Parents

- How to Talk to your Parents
- Is a CCRC the Right Place for your Parents?

### Email Sign-Up

Enter your email address and receive updates

First Name

Last Name

Email Address

[Sign Up](#)

### How to talk to your parents about making a move to senior living.

Draw from Springpoint's experience with retirement communities and health services in Central New Jersey.

Talking about a major life transition can be one of the most challenging conversations you can have with your parents. It means looking hard at the future, from planning for financial security to considering options for health care. As New Jersey's largest not-for-profit sponsor of retirement communities and services, **Springpoint** has almost a century of senior health care experience. We can be your central source for practical information.


These thoughts can begin the process, but please remember, we are always ready to help you. **Call 877-586-1552 or [contact us](#)** for help. We can provide facts and show you alternatives you may not know about. There's never any sales pressure. As a mission-driven organization, our first responsibility is to serve you.

**Parents usually say:**

**"We're just not ready yet."**


Too often, people decide that they're ready when a health crisis strikes.

### Schedule a Visit



Enjoy our hospitality and meet our residents.

[RSVP Here](#)



www.monroevillageonline.org/health-and-senior-services-central-nj.php

**"We're afraid of spending down our assets."**

That's a common concern, but our communities offer a refundable entrance fee program, so that up to 90% of their entrance fee is returned to their estate—guaranteed. We are happy to provide details to their financial and estate advisors, so that they can make plans with confidence. [Contact us for details](#)

There is no riskier way to deal with your assets than to wait too long, find yourself in a health crisis and be forced to spend down your life savings to provide the care you need.

**"We just can't face selling the house and moving."**

Our Move Ahead Program makes it far easier than you may think. It includes assistance with downsizing—even helping to donate or sell items and ship heirlooms to family. Our planners can visit their home and help them fit their treasures into a new floor plan that shows their antiques and favorite furniture in a beautiful new light.

Move Ahead helps them find the right realtor, stage their home for a successful sale, and even offers financing assistance, so they can move to the community before they sell their house.

When it's time to move, we work with trusted moving partners to pack, ship and unpack everything—seamlessly.

**Figure A**

66. Springpoint also used the volatility of the real estate market in soliciting senior citizen

residents for its facilities. A particularly misleading solicitation for Springpoint Stonebridge promises consumers that signing up to live at a Springpoint facility will relieve them from having to contend with the ups and downs of the real estate market. The brochure promises: “Freedom from the complications of home ownership. When you move to Stonebridge, neither you nor your children will face the future burden of trying to sell your home in a down market.”

67. This statement is particularly false and misleading given that Springpoint CCC Facility residents are in fact exposed to only real estate downturns (and do not benefit from real estate upswings) because when they or their estate seek to get their 90% Refundable Plan refund, it is significantly reduced when their independent living unit is relet to an occupant who paid an entrance fee substantially less than that paid for on behalf of the family’s decedent. This was due to economic incentives, such as a discount on entrance fees that Springpoint offered incoming residents in order to lure them as, from 2007 onward, residential real estate prices deteriorated and Springpoint vacancy rates escalated.

68. Springpoint’s Stonebridge facility sends mail solicitations to elderly people in its surrounding area that not only solicits them to move into Stonebridge for its amenities, but actually offers to help sell their homes in order to move into Stonebridge. Springpoint Stonebridge does this through sending prospective residents “*Moving Made Easy*” invitations to entice seniors to a free luncheon with a guest real estate speaker who promises to teach “success tips and insider secrets for selling your home at the best price and with the least stress.”

69. Springpoint even teamed up with a financial institution to lure seniors into taking on debt to enter the Springpoint CCC Facilities if they could not sell their home. One Springpoint flyer in this vein states: “Elderlife, a national company, personalized financial concierge services can

help you explore options and unlock solutions. This service is complimentary. If you are ready to move but haven't sold your home, Elderlife's Capital Access Program (CAP) is for you. Developed with Merrill Lynch Wealth Management, CAP uses your home or investments as collateral for customized, secure bridge funding for your entrance fee for Stonebridge – at no interest cost to you.”

70. An example of these types of aggressive advertisements targeting New Jersey's senior citizens is a postcard advertising mailer for Monroe Village (Figure B, below) that trumpets the slogan “Move Now, Sell Later!” The postcard entices new prospective residents to visit, providing details of a promotion for a 20% discount on entrance fees with a deadline of April 30, 2009. It also proposes deferral of payment of Entrance Fees for up to two years until the prospective resident's home sells. At the very least, this postcard was in effect in March 2009 when Monroe Village countersigned the Residence and Care Agreement contract in late 2008; however, the DeSimone family was not informed of the potential for this promotion at the time Springpoint Monroe Village countersigned the Residence and Care Agreement contract in late 2008, despite the fact that it would impact the amount of their 90% refund.

Figure B

# You CAN Afford Resort-style Retirement!

## “Move Now, Sell Later” Program

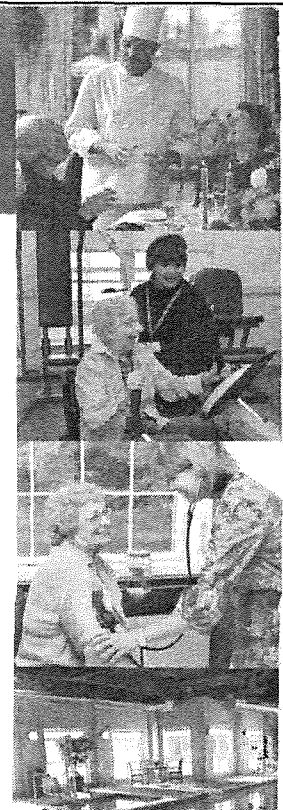
We help you make the move, even if your home hasn't sold. Here's how:

- ▶ **20% discount on entrance fee**
- ▶ **Defer your entrance fee payment for up to two years,** until your home sells\*
- ▶ **\$500 credit toward monthly service fee** for up to 12 months to cover your current association fees, utility costs and other expenses

\* Promissory note renewed annually for up to two years, until your house sells.  
“Move Now, Sell Later” offer for those who give a 10% deposit by April 30, 2009.



# Monroe Village



## Learn How Affordable Resort-style Retirement Can Be!

Our “Move Now, Sell Later” Program offer brings you true retirement freedom with fewer worries about whether or not your home will sell. With some of the lowest fees in Central New Jersey, the area's best value in retirement living just got even more affordable!

Call today for more information!  
**1-866-859-2276**

# Monroe Village

INDEPENDENT LIVING  
Assisted Living • Skilled Nursing/Rehab

Monroe Village  
One David Brainerd Drive  
Monroe Township, NJ 08831



PRESORT  
First Class  
U.S. Post  
PAID  
Princeton  
Permit 3



71. During 2007 (and possibly earlier as discovery may reveal), Springpoint began experiencing decreases in independent living unit occupancy rates at its five Springpoint CCC Facilities as current residents died or moved out of the facilities permanently. The declining occupancy rate (or viewed alternatively, the growing vacancy rate) has lasted for several years and may still be continuing presently.

72. A decrease in the occupancy rate has two negative effects on Springpoint's operations: (a) it causes a decline in Springpoint's entrance fee revenue, and (b) generates significant financial stresses and burdens on Springpoint CCC Subsidiaries' ongoing operations. This is because revenue derived from the monthly fees from existing residents is unable to cover a facility's overhead and variable costs as easily due to increased vacancy rates. This increase of the financial pressure on Springpoint's management to raise a facility's monthly fees at a higher rate. Increases in monthly fees, in turn, have multiple negative impacts on a facility's occupancy rates. Besides inducing current residents to move out, higher monthly fees also exacerbate the financial pressure on the facility by triggering refund obligations under the Residence and Care Agreements. Finally, the lack of adequate revenue can act as an economic deterrent to attracting new residents to move into the facility.

73. Springpoint's management responded to decreasing occupancy rates by offering substantial discounts of 20% or more on entrance fees to prospective residents in order to increase occupancy rates. When these entrance fee discounts for certain models at certain Springpoint CCC Facilities became repetitive, Springpoint's management sought and obtained DCA's permission to permanently reduce the list price of such models in order to avoid the necessity of filing repeated amendments for the facility with DCA.

74. These discounted entrance fees cause the former unit's resident to bear the cost of the discount to his/her (or his/her estate's) detriment and ascertainable loss. Often the ascertainable loss was tens of thousands of dollars in size, as it was in Plaintiff's decedent's case.

75. Springpoint's price discounts and economic incentives also caused delays in the refund payment to residents and their families or decedent estates. In accepting promissory notes from new residents for deferred entrance fee payments (see Figure "B"), Springpoint ensured that the refunds to departing tenants or their estates would not be paid until Springpoint received full payment of the promissory note. As a consequence, during this deferred period, the departing resident (or his/her estate) lost the use of their Entrance Fee refund and any income that could have been earned on it, all to their ascertainable economic loss and detriment.

76. Springpoint's management knew and was aware of the material detrimental economic impact Springpoint's discounts and economic incentives would have on entrance fee refunds for residents who were or could be affected by these incentives or price reductions, but did not disclose that these price incentives would have an impact on residents enrolling in the 90% Refundable Plan.

77. Ongoing decreased occupancy rates in the five Springpoint CCC Facilities was also a threat to Springpoint's corporate financial credit rating, which was important to its ability to finance itself through issuing bonds and borrowing money. Springpoint CCC Facilities' occupancy rates were a factor considered by bond rating agencies such as Fitch Ratings, Inc. ("Fitch") and Standard & Poor's ("S & P").

78. On August 1, 2011, Fitch took into account the continuing decline of Springpoint CCC Facilities' occupancy rates and downgraded its credit rating of Springpoint Senior Living (NJ)

Bonds to “BBB+” from “A-“. According to Fitch’s Press Release announcing the downgrade decision, occupancy rates had dropped 10 percent over the past 4 years:

\*\*\*

#### CREDIT SUMMARY

“The rating downgrade to 'BBB+' reflects the stress that declining occupancy has had on Springpoint's operating and financial profile, including lower levels of entrance fee receipts....

#### KEY RATINGS DRIVERS

Negative Independent Living Unit (ILU) Occupancy Trend Continues: Average ILU occupancy for the six months ending June 30, 2011 fell to 80% from an average occupancy of 82% during fiscal 2010, continuing a negative trend in occupancy dating back to 2007, when ILU occupancy stood at 92.2%.

\*\*\*

(Press release available on line at <http://www.reuters.com/article/2011/08/01/idUS226127+01-Aug-2011+BW20110801>.)

#### **E. Springpoint’s Aggressive and Deceptive Tactics to Sell the 90% Refundable Plan**

79. Each Springpoint CCC Facility sales and marketing department heavily emphasized and sold the higher priced 90% Refundable Plan to prospective residents. A uniform sales pitch was used during sales sessions regarding the 90% Refundable Plan that baited and lured Plaintiffs’ decedents and their families, as well as others similarly situated, into paying the substantially higher entrance fees for the 90% Refundable Plan. Springpoint’s sales agents’ pitch was very effective in converting high rates of residents electing the 90% Refundable Plan to pay the substantially higher entrance fee amount.

80. Springpoint CCC Facilities’ sales materials and oral presentations, however, were routine, systematic, and materially misleading and fraudulent in that they made no mention and gave no indication that the “90%” amount refunded could actually be significantly less than 90% of what was actually paid as an entrance fee for the following reasons:



(a) The basis to calculate the refund amount is a contractual term that is buried deep in the “90% Refundable Residence and Care Agreement” used at Springpoint CCC Facilities, which provided contractually that the refund was the *lesser* of 90% of the resident’s entrance fee paid by the resident or 90% of the subsequent resident’s Entrance Fee amount paid by the subsequent occupier of that living accommodation unit; and/or

(b) There was no disclosure or explanation that the amount of the 90% refund could be significantly and negatively impacted by sales promotion “incentives” (such as 20% discounts on entrance fees). Nor was there any disclosure or explanation of Springpoint’s management’s decision to lower certain Living Accommodation Unit Entrance Fee list prices permanently to avoid having to repeatedly request DCA’s approval of offering sales incentives to relet vacant living accommodation units;

81. Springpoint’s sales materials and oral presentations to prospective residents also emphasized that the Entrance Fee was not a purchase of an interest in real estate or a real estate transaction. The Entrance Fee was explained by Springpoint employees as a payment to cover future health care costs.

82. Springpoint CCC Facilities’ misleading oral presentations continue to occur on a routine basis. On information and belief, three Springpoint sales and marketing employees who were interviewed by a private investigator during 2013 failed to voluntarily disclose the “lesser than” caveat to the 90% refundable option plan, and only one did so when asked directly about the topic.

## F. Springpoint's Materially Misleading Disclosure Statements

83. New Jersey's public policy, as promulgated by the New Jersey Legislature in the preamble to the *Continuing Care Retirement Community Regulation and Financial Disclosure Act*, ("CCRC Act") recognizes that "there is a need for full disclosure concerning the terms of agreements made between prospective residents and the continuing care providers and the operations of the providers." *CCRC Act*, N.J.S.A. §52:27D-331.

84. CCRC's legislative history indicates, pursuant to the CCRC, the Legislature intended disclosure statements, as well as marketing materials and collateral, provide strong and meaningful legal protections and rights to residents of continuing care communities. When then-Governor Keane rejected the first iteration of the bill that ultimately became the CCRC, he explained:

" . . . While there is clearly a need for regulation in this area, I regret I am unable to sign this bill as it appears before me today. This is a very complex bill, and additional time is needed to study its provisions and **develop amendments which will provide workable and strong protections for senior citizens**. As New Jersey citizens begin to reach their twilight years, they become fearful that they will fall victim to the illnesses that so often accompany age. To allay their fears, many decide to investigate the various continuing care retirement communities that are becoming more prevalent in our State. When a senior citizen joins a community, often he must turn over a substantial portion of his assets. In addition he is required to pay monthly maintenance fees to ensure the continuation of services offered at the facility. **In light of this I believe more safeguards should be built into this legislation to protect residents and prospective residents. For example, I believe that more complete disclosure requirements should be considered.** In addition, I am not convinced that the reserve requirements in this bill are sufficient and I believe further study in this area is required. A provision should be added to prevent unconscionable fee increases as well as reductions in services. Finally, other provisions in the bill should be clarified and, in some instances, expanded to offer the maximum protection to residents under the laws of this State. Due to the significant

additional work which this complex legislation requires, I am unable to sign it at this time. Accordingly, I herewith return Assembly Committee Substitute for Assembly Bill Nos. 2594 and 2613 (SR) without my approval.

85. Governor Florio likewise expressed similar views regarding the strong protective nature and purpose of the CRCC in his statement on signing into law the 1991 amendments to the *CCRC Act*, which provided for civil penalties for each CCRC violation: "The elderly can be vulnerable consumers at the hands of unscrupulous or fraudulent facilities, and it is our job to protect them. This law helps us do that."

86. The purpose of the *CCRC Act*'s disclosure statement is to alert and inform prospective residents (or their representative, often a child or close family member) of important facts, factors and contractual terms before the consumer enters the CCC as a resident, executes a continuing care agreement, and the consumer pays a substantial entrance fee such as those charged by the Springpoint CCC Facilities described above.

87. In furtherance of New Jersey's public policy of full disclosure to senior citizens considering whether to take up residence in a CCC, the *CCRC Act* requires CCC "providers", such as the Springpoint CCC Facilities, to prepare and file an initial written disclosure statement and then thereafter annual written disclosure statements with the DCA.

88. Under the *CCRC Act*, providers such as Springpoint must designate knowledgeable liaison personnel and make them available to prospective residents to answer questions about any information contained in the disclosure statement or contract, including financial information or questions. *CCRC Act*, N.J.S.A. §52:27D-336 and D-344. Despite these statutory requirements, Springpoint's designated personnel failed to fully, fairly and accurately answer questions by the

DeSimone family and other class members concerning the actual method of calculating and delivering the 90% Refundable option contained in the disclosure statement and contract. This failure by the Springpoint Defendants to provide personnel to explain the plan to Plaintiffs and other class members, to the Plaintiffs and class members' detriment, injury, and loss, was a breach of the *CCRC Act*.

89. The *CCRC Act* requires a CCC provider, such as the Springpoint CCC Facilities, to deliver the most current disclosure statement to prospective residents and to any other person with whom a continuing care agreement is or may be entered into, and give it to them prior to the provider's acceptance of part or all of any application or entrance fee, or the execution of the continuing care agreement by the resident, whichever occurs first. *Id.*

90. A provider must amend a current annual disclosure statement "if, in the opinion of the provider or the department, an amendment is necessary to prevent the disclosure statement from containing any material misstatement of fact or omission to state a material fact as required pursuant to this act." N.J.S.A. §52:27D-337c. The *CCRC Act* also requires that the "provider shall file an amendment or amended disclosure statement with the commissioner before the provider provides it to a resident or prospective resident." *Id.*

91. The Act bans persons from filing disclosure statements that contain assertions that could be misleading. *CCRC Act*, N.J.S.A. §52:27D-338(b). It also prohibits the use of false and misleading statements in advertising, whether in notices or circulars. *CCRC Act*, N.J.S.A. §52:27D-338(b).

92. The disclosure statements are required to be in plain English and in language understandable by ordinary laypersons. N.J.S.A. §52:27D-336, §52:27D-337. Among the

information that must be provided in the disclosure statement is a description of all fees required of residents, including the application fee, entrance fee and periodic charges. NJSA §52:27D-336, §52:27D-337.

93. Springpoint's staff prepared the disclosure statements that were filed with the DCA on behalf of each of the Springpoint CCC Facilities; each disclosure statement states that it was prepared by Gary T. Puma.

94. Each of the Springpoint CCC Facilities' disclosure statements contains a legend stating that DCA had neither approved nor disapproved the merits of the disclosure statement. Thus, Springpoint and the Springpoint CCC Facilities are wholly responsible for the disclosure statements' content, and any omissions therein.

95. While the Springpoint CCC Facilities' disclosure statements differ in content from facility to facility on certain items, such as facility description, amenities, and services, from at least 2006 forward the Springpoint CCC Facilities disclosures regarding the 90% Refundable Plan were essentially the same in material content, with the exception of Springpoint Meadow Lakes' disclosure statement.

96. The description of the 90% Refundable Plan appearing in Springpoint Stonebridge's 2008 disclosure statement is typical of the disclosures given by the Springpoint CCC Facilities other than Springpoint Meadow Lakes and reads in pertinent part:

**Entrance Fee**

The Entrance Fee is a one-time payment based upon the type of Living Accommodation and Entrance Fee plan selected by the Resident, and the number of occupants. Two Entrance Fee plans are offered, the "Traditional" plan and the "90% Refundable" plan. Both Entrance Fee plans require an additional person fee if more than one person occupies the Living Accommodation.

\*\*\*

2. The 90% Refundable plan requires the payment of a higher Entrance Fee and allows for up to 90% of the Entrance Fee to be refunded. Should the Resident require permanent placement in the Assisted Living section or nursing section of the Health Care Center the Entrance Fee will be reduced by a "Declining Balance Fee". This fee is the amount by which the entrance fee is reduced for each month that the Resident occupies or is entitled to occupy a bed in the Nursing Facility section or Assisted Living Facility section of the Health Care Center. This fee is further described in Section V.D. of the Residence and Care Agreement.

Payment of the Entrance Fee refund shall be made upon the execution of a new residence agreement for the Living Accommodation and expiration of the rescission period of the incoming resident unless a current community resident transfers to the Resident's Living Accommodation upon its vacancy, in which case payment of the refund shall be upon payment of a new entrance fee and expiration of the rescission period of an incoming resident occupying the current resident's previous living accommodation.

\* \*\*

The refundability of the Entrance Fee is described in detail in Section VI of the attached Residence & Care Agreements.

97. The disclosure statements for the Springpoint Meadow Lake Facility from at least 2006 onwards differed from the other four Springpoint CCC Facilities in that the Springpoint Meadow Lakes disclosure about the 90% Refundable Plan states that the base on which the 90% refund would be calculated was either what the consumer paid as an Entrance Fee or what the subsequent occupant of his or her resident unit paid as an Entrance Fee:

After the expiration of the rescission period, payment of an Entrance Fee refund shall be within sixty days following the execution of a new residence agreement for the Living Accommodation and expiration of the rescission period of the incoming resident unless a current community resident transfers to the Resident's Living Accommodation upon its vacancy, in which case payment of the refund shall be within sixty days of payment of a new entrance fee and expiration of the rescission period of an incoming resident occupying the current resident's previous living accommodation.

In both the Traditional Residence and Care and 90% Refundable Residence and Care Agreement, the Resident's Entrance Fee payment is reduced by ten (10)

percent (for administrative processing and Living Accommodation restoration) and may be reduced by additional charges incurred by the Resident as more specifically set forth in each agreement. **The following is a brief summary of other reductions to a resident's Entrance Fee. A more detailed description of this refunding process can be found in Section VI of the attached Residence & Care Agreements.**

\*\*\*

2. 90% Refundable Residence and Care Agreement.

The 90% Refundable plan requires the payment of a higher Entrance Fee than the Traditional plan. Under the 90% plan the Resident may receive up to 90% of the Resident's Entrance Fee or the subsequent resident's Entrance Fee....

\*\*\*

*(Underlined emphasis added)*

98. Although each Springpoint CCC Facilities' disclosure documents indicate that a more detailed description of the refund (or in Springpoint Monroe Village's case, what is described the "refundability of the Entrance Fee") could be found in an attached Residence and Care Agreement, the contractual provisions describing the 90% refund in these agreements is buried deep within these agreements. The provisions appear anywhere from pages 18 to 25 of the written contract. In contrast, during sales presentations and in response to questions, Springpoint CCC Facilities' personnel were trained to, and did, explain the 90% refund as "getting 90% of your Entrance Fee back" less assisted living or skilled nursing deductions. The sales personnel were also trained to, and did, explain that the Entrance Fee was to cover health care costs and was not a real estate transaction. It was never routinely voluntarily mentioned or explained to prospective residents that there was a significant real estate market risk associated with the Entrance Fee refund.

99. At no time material herein did the statutory disclosure statements of any of the five (5)

Springpoint CCC Facilities disclose to or inform prospective residents, including Plaintiff's decedent, that price discounts or other incentives could be offered future prospective residents that could detrimentally effect payment of the 90% Entrance Fee refunds to residents electing the 90% Refundable Plan.

100. At no time material herein after Springpoint CCC facilities had begun to offer price discounts or other incentives to prospective incoming residents did any of the five (5) Springpoint CCC Facilities statutory disclosure statements disclose to or inform prospective residents, including Plaintiff's decedent, that Springpoint Facilities was offering price discounts or other incentives to prospective residents that could affect payment of the 90% Entrance Fee refunds to residents electing the 90% Refundable Plan.

101. None of Springpoint CCC Facilities' communications, whether oral or written, sales presentations, or other marketing collateral materials routinely inform or advise prospective residents prior to signing the Residence and Care Agreement that price discounts or other incentives Springpoint might offer to prospective residents in the future could detrimentally affect resident refunds of the Entrance Fee refunds to residents electing the 90% Refundable Plan.

102. Information regarding the existence, occurrence, history, prospect or possibility of price discounts or other incentives relating to Springpoint CCC Facilities' entrance fees are material information that could and would affect the decision of a senior citizen consumer to move into a Springpoint CCC Facility and select the 90% Refundable Entrance Fee Plan option offered by Springpoint.

103. Defendants' omission, concealment or suppression of information regarding the



existence, occurrence, history, or possibility of price discounts, and the effect of such discounts on the amount paid as an Entrance Fee refund and/or the timing of the Entrance Fee refund, during which time no interest is paid, was material and misleading to consumers.

104. Defendants' omission of information regarding the existence, occurrence, history, prospect or possibility of price discounts, and the effect of same on the amount paid as an Entrance Fee refund and/or the timing of the Entrance Fee refund, during which time no interest is paid, was done knowingly and with the intent by each that senior citizen consumers rely upon such omissions in connection with their election of the 90% Refund option.

#### **JURISDICTION AND VENUE**

105. This Court has jurisdiction over the subject matter of this action as the parties are New Jersey citizens and residents, the alleged conduct giving rise to Plaintiffs' allegations occurred in New Jersey, the class members are all (or are substantially all) New Jersey citizens, New Jersey residents or New Jersey decedent estates, and the legal rights and causes of actions all arise out of New Jersey law, including the New Jersey Continuing Care Retirement Community Regulation and Financial Disclosure Act, the New Jersey Consumer Fraud Act, and/or the common law of New Jersey.

#### **CLASS ACTION ALLEGATIONS**

106. Plaintiffs bring this class action under and pursuant to N.J.S.A. §4:32 *et seq.*, on behalf of their decedents' estates and others similarly situated, seeking relief as more fully set forth hereinafter, including, but not limited to, statutory, compensatory and other fair and adequate damages for the Class members, together with equitable relief, and together with an award of counsel fees and costs, for the following Class:

All persons or their Estates who are or were a party to a 90% Refundable Entrance Fee Residence and Care Agreement with any of the following Springpoint Continuing Care Community facilities: Crestwood Manor, Meadow Lakes, Monroe Village, Stonebridge at Montgomery and The Atrium at Navesink Harbor; and who:

a) Did not receive a 90% entrance fee refund calculated upon the amount he or she, or his/her decedent's estate paid on entering the facility when his or her residence in the facility terminated; or

b) Are subject to the possibility that in the future that he or she, or his or her estate, will not be paid a 90% Entrance Fee refund that is calculated upon the amount that he or she, or his/her decedent's estate, paid on entering the facility at the time his or her residence in the facility terminates.

107. The members of the Class are so numerous that joinder of all members is impracticable.

108. There are numerous questions of law and of fact common to the members of the Class, which questions relate to the existence of the acts of wrongdoing alleged herein, the liability of Defendants, and the culpability of Defendants.

109. Questions of law and fact common to the Class include, but are not limited to:

(a) Whether Springpoint and the Springpoint CCC Facilities misrepresented the terms and conditions of the 90% Refundable Plan to incoming residents;

(b) Whether the Springpoint CCC Facilities violated the disclosure requirements of the New Jersey Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-337;

(c) Whether the Springpoint CCC Facilities violated the New Jersey Continuing Care Retirement Community Regulation and Financial Disclosure Act by entering into a contract for continuing care with a person who has relied on a disclosure statement which omits a material fact required to be stated therein;

(d) Whether the Springpoint CCC Facilities violated the New Jersey Continuing Care Retirement Community Regulation and Financial Disclosure Act by entering into a contract for continuing care with a person who has relied on a advertisement or circular which is misleading pursuant to the act;

(e) Whether the marketing strategy employed by Springpoint at the Monroe Facility was part of a uniform scheme by Springpoint's management to defraud prospective residents;

(f) Whether Springpoint committed fraud by intentionally deceiving prospective residents regarding the amount to be refunded under the 90% Refundable Entrance Fee Plan;

(g) Whether Springpoint and the Springpoint CCC Facilities violated the New Jersey Consumer Fraud Act;

(h) Whether the Springpoint CCC Facilities breached New Jersey's implied covenant of fair dealing in the Residence and Care Agreements by offering new incoming residents substantial discounts and other incentives that detrimentally impacted on the refund of Entrance Fees to departing residents;

(i) Whether the Plaintiffs and the members of the Class are entitled to statutory, compensatory and/or exemplary damages, and, if so, the nature of such damages;

(j) Whether the Springpoint CCC Facilities are liable to Plaintiffs and members of the Class under N.J.S.A. §52:27D-347 for the repayment of all fees paid to them as a CCC provider, facility or person, plus interest thereon at the legal rate,

court costs and reasonable attorney's fees, based upon their violations of the New Jersey Continuing Care Retirement Community Regulation and Financial Disclosure Act; and

(k) Whether the Plaintiffs and the members of the Class are entitled to equitable relief in the form of an injunction enjoining further unconscionable, deceptive or wrongful commercial practices that violate the New Jersey Consumer Fraud Act and/or the NJ Continuing Care Retirement Community Regulation and Financial Disclosure Act.

110. Plaintiffs' claims are typical of the claims of the class. Plaintiffs and all members of the Class have sustained, or are likely to sustain in the future, damages, and the financial losses directly caused by the Defendants' acts, omissions, misrepresentations and contractual breaches regarding the 90% Refundable Plan.

111. Plaintiffs will fairly and adequately assert and protect the interests of the Class, have no conflict of interest with respect to any named or unnamed members of the Class, and fully intend to prosecute this action. Plaintiffs fully recognize their role and appreciate their role as representing hundreds of consumers who have been subjected to Springpoint's wrongful and fraudulent marketing practices, concealments and breaches of contract.

112. Plaintiffs have retained competent counsel experienced in class actions and consumer fraud litigation. Counsel will fairly and adequately protect the interest of the Class and Subclasses.

113. Plaintiffs have adequate financial resources or have made ethical arrangements with counsel whereby the cost of the administration of this litigation will be fully undertaken and

provided.

114. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

115. Questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including pleading and factual issues relating to liability and remedies.

116. This Class Action is a fair and efficient method of adjudicating the controversy. This is a consumer class action in which the damages of the Class in the aggregate are large and justify the significant expenses for research, investigation, discovery, hiring of experts and trial preparation which would be required to prosecute claims on behalf of the Class.

117. The action is manageable as a Class Action. Upon information and belief, the records of Defendants will enable the Plaintiffs to identify other members of the Class. The Class is predominantly New Jersey residents and notice by publication can be employed to notify those Class members for which Springpoint does not have identifying information.

**COUNT I**  
**VIOLATION OF THE NEW JERSEY CONTINUING CARE RETIREMENT**  
**COMMUNITY REGULATION AND FINANCIAL DISCLOSURE ACT AND THE NEW**  
**JERSEY CONSUMER FRAUD ACT**  
**(Against all Defendants – Misleading Advertisements/Marketing Collateral Materials)**

118. Plaintiffs hereby incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

119. Each of the Springpoint CCC Facilities is a “provider” as that term is defined in N.J.S.A.

§52:27D-332 (i).

120. The *CCRC Act* and administrative regulations thereunder requires that a provider shall not make, publish, disseminate, circulate, or place before the public, or cause to be made, published, disseminated, or circulated, or place before the public any advertisements, notices, circulars, mailings, and pamphlets that contain assertions, representations, or statements which are untrue or misleading. §52:27D-338 (a).

121. Each of the five Springpoint CCC Facilities utilized advertisements, notices, circulars, mailings, and pamphlets that were materially false and misleading in that they failed to disclose to prospective residents that entrance fee refunds could be negatively impacted by entrance fee list price reductions, discounts, sales or other incentives offered to subsequent residents of their units in order to generate unit living sales, in violation of N.J.S.A. 52:27D-338(a) and (c).

122. Springpoint and each of the five Springpoint CCC Facilities willingly and knowingly made and utilized advertisements, notices, circulars, mailings, and pamphlets that were materially false and misleading to the extent that they omitted to disclose to prospective residents that Springpoint's management had already in the past offered discounts, sales or incentives to new residents that could materially impact the entrance fee refund a prospective resident would receive. As such, their conduct was in violation of the *CCRC Act*.

123. Plaintiffs and members of the Class relied upon advertisements, notices, circulars, mailings, and pamphlets that contained untrue or misleading statements, in violation of the *CCRC Act* as set forth above.

124. The New Jersey Consumer Fraud Act ("NJCFA") provides that Defendants have a duty not to engage in "any unconscionable commercial practice, deception fraud, false pretense, false

promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise.” N.J.S.A. §56:8-2.

125. Defendants are “persons” within the meaning of N.J.S.A. §56:8-1.

126. The business activities of Defendants alleged above constitute the sale or advertisement of merchandise within the meaning of the NJCFA. N.J.S.A. §56:8-1.

127. As set forth above, Defendants have jointly, severally and in the alternative engaged in unconscionable commercial practices or deceptive acts or practices where their conduct regarding the 90% Refundable Plan lacked honesty in fact, fair dealing, and good faith or because it had the capacity to mislead consumers acting reasonably. As such, their conduct violated the NJCFA.

128. As set forth above, Defendants have also knowingly omitted, concealed and/or suppressed material facts regarding Springpoint’s 90% refund policies. Defendants did not prominently, clearly or plainly state or disclose in their sales and marketing materials or oral presentations that Springpoint CCC Facilities would not necessarily refund 90% of the amount of Entrance Fee that a resident paid on entering the facility less nursing care charges.

129. Springpoint and Springpoint CCC Facilities made these knowing omissions, concealments or suppressions with the intent that consumers such as Plaintiff’s decedent, her family and members of the Class rely on their omissions. As such, Defendants’ conduct jointly, severally and in the alternative violated the NJCFA.

130. N.J.S.A. § 56:8-2.2 provides “[t]he advertisement of merchandise as part of a plan or scheme not to sell the item or service so advertised or not to sell the same at the advertised price

is an unlawful practice and a violation of the act to which this act is a supplement.”

131. N.J.S.A. §56:8-2.11 provides that “[a]ny person violating the provisions of the NJCFA act shall be liable for a refund of all moneys acquired by means of any practice declared herein to be unlawful.”

132. As a result of Defendants’ conduct in violation of the NJCFA, Plaintiffs and Class Members have already suffered ascertainable losses and/or many Class Members, unless the Springpoint CCC Facilities are restrained from further violation of the NJCFA in the future, will suffer injury and harm.

133. Plaintiffs and members of the Class are entitled to damages and/or restitution of moneys lost or wrongfully withheld as a result of Defendants’ violation of 52:27D-338(a) and (c), which is a violation of the New Jersey Consumer Fraud Act, by imposing a contract on the class that was not consistent with Defendants’ material representation of the 90% Refund plan.

WHEREFORE, Plaintiff prays for judgment on behalf of himself and his Decedent’s Estate, and on behalf of the Class Members defined above, as follows:

- A. Certifying the Class pursuant to N.J.S.A. §43-2, and appointing Plaintiff as representative for said Class Members and Plaintiffs’ counsel as Class Counsel;
- B. Awarding Plaintiffs and Class Members damages under the CCRC Act for violation of N.J.S.A. §52:27D-338(a) and the New Jersey Consumer Fraud Act;
- C. Entering a final decree and order declaring that Defendants’ conduct by violating the CCRC Act, violated the New Jersey Consumer Fraud Act and further Ordering Defendants pursuant to N.J.S.A. §56:8-2.11 to disgorge and make restitution to Plaintiffs and members of the Class by repaying all monies received or collected from



Plaintiffs and Class Members;

- D. Entering a final decree and order enjoining Defendants from committing in the future the misconduct and omissions that violated the New Jersey Consumer Fraud Act;
- E. Awarding reasonable costs and attorneys' fees to Plaintiffs and their counsel;
- F. Awarding applicable pre-judgment and post-judgment interest; and
- G. Awarding such other relief as the Court may deem just and proper.

**COUNT II**  
**VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT**  
**(Against all Defendants for Misleading Disclosure Statement)**

134. Plaintiffs hereby incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

135. Defendants are "persons" within the meaning of N.J.S.A. §56:8-1.

136. The New Jersey Consumer Fraud Act ("NJCF A") provides that Defendants have a duty not to engage in "any unconscionable commercial practice, deception fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise." N.J.S.A. §56:8-2.

137. The business activities of Defendants alleged above constitute the sale or advertisement of merchandise within the meaning of the NJCF A. N.J.S.A. §56:8-1.

138. As set forth above, Defendants have jointly, severally and in the alternative engaged in unconscionable commercial practices or deceptive acts or practices where their conduct regarding the 90% Refundable Plan lacked honesty in fact, fair dealing and good faith or because it had the capacity to mislead consumers acting reasonably. As such, their conduct violated the

NJCFA.

139. As set forth above, Defendants have also knowingly omitted, concealed and/or suppressed material facts regarding its 90% refund policies. Defendants uniformly did not prominently, clearly or plainly state or disclose in their statutory disclosure statements that Springpoint CCC Facilities would not necessarily refund 90% of the Entrance Fee that they paid on entering the facility less nursing care charges.

140. Springpoint and Springpoint CCC Facilities made these knowing omissions, concealments or suppressions with the intent that consumers such that Plaintiff's decedent, her family and members of the Class relied and rely on their omissions. As such, Defendants' conduct jointly, severally and in the alternative violated the NJCFA.

141. N.J.S.A. § 56:8-2.2 broadly prohibits such knowing omissions and concealments. It provides "[t]he advertisement of merchandise as part of a plan or scheme not to sell the item or service so advertised or not to sell the same at the advertised price is an unlawful practice and a violation of the act to which this act is a supplement."

142. N.J.S.A. §56:8-2.11 provides that "[a]ny person violating the provisions of the NJCFA act shall be liable for a refund of all moneys acquired by means of any practice declared herein to be unlawful."

143. As a result of Defendants' conduct in violation of the NJCFA, Plaintiffs and Class Members have already suffered ascertainable losses and/or many Class Members, unless the Springpoint CCC Facilities are restrained from further violation of the NJCFA in the future, will suffer injury and harm.

WHEREFORE, Plaintiff prays for judgment on behalf of himself and on behalf of the Class

Members defined above, as follows:

- A. Certifying the Class pursuant to N.J.S.A. §43-2, and appointing Plaintiffs as representative for said Class Members and Plaintiffs' counsel as Class Counsel;
- B. Awarding Plaintiffs and Class Members compensatory damages and/or statutory damages;
- C. Entering a final decree and order declaring that Defendants' conduct violated the New Jersey Consumer Fraud Act and further Ordering Defendants pursuant to N.J.S.A. §56:8-2.11 to disgorge and make restitution to Plaintiffs and members of the Class by repaying all monies received or collected from Plaintiffs and Class Members;
- D. Entering a final decree and order enjoining Defendants from committing in the future the misconduct and omissions that violated the New Jersey Consumer Fraud Act;
- E. Awarding reasonable costs and attorneys' fees to Plaintiffs and their counsel;
- F. Awarding applicable pre-judgment and post-judgment interest; and
- G. Awarding such other relief as the Court may deem just and proper.

**COUNT III**  
**VIOLATION OF THE NEW JERSEY CONTINUING CARE RETIREMENT**  
**COMMUNITY REGULATION AND FINANCIAL DISCLOSURE ACT**  
**(Against Springpoint, and All Springpoint Facilities and Subsidiaries, save Springpoint**  
**Meadow Lakes; Misleading Disclosure Statement)**

144. Plaintiff hereby incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

145. Each of the Springpoint CCC Facilities is a "provider" as that term is defined in N.J.S.A. 52:27D-332 (i).

146. The CCRC Act and administrative regulations thereunder requires that a provider give a

copy of the current annual disclosure statement to prospective community residents prior to their executing a contract with or transferring any money to the provider.

147. The act requires disclosure statements to provide, among other things, an accurate description of all fees required of residents subject to contracts for continuing care, including fair and accurate descriptions of entrance fees charged. N.J.A.C. §5:19-4.2.

148. The disclosure statements prepared and disseminated by the following four Springpoint CCC Facilities: Springpoint Crestwood Manor, Springpoint Monroe Village, Springpoint Stonebridge and Springpoint Atrium, were materially false and misleading in that they failed to properly disclose to prospective residents that entrance fee refunds under the 90% Refundable Plan would be based upon the lesser of what the resident paid or what a subsequent resident of the living unit paid as entrance fee.

149. Under N.J.S.A. §52:27D-347(a), a provider or persons acting on behalf of the provider, such as Defendant Springpoint, or each of the Defendant Springpoint CCC Subsidiaries or persons acting on behalf of the provider, such as Defendant Springpoint who prepared the disclosure statements, are liable to persons who contract for continuing care for damages, including repayment of all fees paid to the provider, facility or person who violates this act plus interest thereon at the legal rate, court costs and reasonable attorney's fees, where, as here, the provider or person acting on behalf of the provider enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement which omits a material fact required to be stated therein pursuant to the CCRC Act.

150. Plaintiffs and members of the Class relied upon disclosure statement that omitted material facts required to be stated therein pursuant to the CCRC Act as set forth above.

151. Plaintiffs and members of the Class paid substantial fees to the provider for which they are entitled to receive back as damages as provided for in N.J.S.A. §52:27D-347(a).

WHEREFORE, Plaintiff prays for judgment on behalf of himself and his Decedent's Estate, and on behalf of the Class Members defined above, as follows:

- A. Certifying the Class pursuant to N.J.S.A. §43-2, and appointing Plaintiff as representatives for said Class Members and Plaintiff's counsel as Class Counsel;
- B. Awarding Plaintiffs and Class Members damages under the Retirement Community Act, N.J.S.A. §52:27D-347(a);
- C. Enter a final decree and order declaring that Defendants' conduct violated the CCRC Act and regulations thereunder, and further ordering Defendants pursuant to N.J.S.A. §52:27D-347(a) to disgorge and make restitution to Plaintiffs and members of the Class by repaying all monies received or collected from Plaintiff's Decedents and Class Members;
- D. Awarding reasonable costs and attorneys' fees to Plaintiff and his counsel;
- E. Awarding applicable pre-judgment and post-judgment interest; and
- F. Awarding such other relief as the Court may deem just and proper.

**COUNT IV**  
**VIOLATION OF THE NEW JERSEY CONTINUING CARE RETIREMENT**  
**COMMUNITY REGULATION AND FINANCIAL DISCLOSURE ACT**  
**(Against all Defendants; Failure to Inform of Discounted Entrance Fees)**

152. Plaintiffs hereby incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

153. Each of the Springpoint CCC Facilities is a "provider" as that term is defined in N.J.S.A. §52:27D-332 (i).

154. The CCRC Act and administrative regulations thereunder requires that a provider give a copy of the current annual disclosure statement to prospective community residents prior to their executing a contract with or transferring any money to the provider.

155. The Act requires disclosure statements to provide, among other things, an accurate description of all fees required of residents subject to contracts for continuing care, including fair and accurate descriptions of entrance fees charged. N.J.A.C. §5:19-4.2.

156. Each of the five Springpoint CCC Facilities disclosure statements were materially false and misleading in that they failed to disclose to prospective residents that entrance fee refunds could be negatively impacted by entrance fee list price reductions, discounts, sales or other incentives offered to subsequent residents of their units in order to generate unit living sales.

157. Each of the five Springpoint CCC Facilities disclosure statements were materially false and misleading to the extent that they omitted to disclose to prospective residents that Springpoint's management had already in the past offered discounts, sales or incentives to new residents, which discounts or incentives could materially impact the entrance fee refund they would receive.

158. Under N.J.S.A. §52:27D-347(a), a provider such as each of the Defendant Springpoint CCC Subsidiaries or persons acting on behalf of the provider, such as Defendant Springpoint, who prepared the disclosure statements, are liable to persons who contract for continuing care for damages, including repayment of all fees paid to the provider, facility or person who violates this act plus interest thereon at the legal rate, court costs and reasonable attorney's fees, where, as here, the provider or person acting on behalf of the provider enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement which omits a material

fact required to be stated therein pursuant to the CCRC Act.

159. Plaintiffs and members of the Class relied upon a disclosure statement that omitted material facts required to be stated therein pursuant to the CCRC Act as set forth above.

160. Plaintiffs and members of the Class paid substantial fees to the provider for which they are entitled to receive back as damages as provided for in N.J.S.A. §52:27D-347(a).

WHEREFORE, Plaintiff prays for judgment on behalf of himself and his Decedent's Estate, and on behalf of the Class Members defined above, as follows:

- H. Certifying the Class pursuant to N.J.S.A. §43-2, and appointing Plaintiff as representative for said Class Members and Plaintiff's counsel as Class Counsel;
- I. Awarding Plaintiffs and Class Members damages under the Retirement Community Act, N.J.S.A. §52:27D-347(a);
- J. Enter a final decree and order declaring that Defendants' conduct violated the Retirement Community Act and regulations thereunder, and further ordering Defendants pursuant to N.J.S.A. §52:27D-347(a) to disgorge and make restitution to Plaintiffs and members of the Class by repaying all monies received or collected from Plaintiff's Decedents and Class Members;
- K. Awarding reasonable costs and attorneys' fees to Plaintiff and his counsel;
- L. Awarding applicable pre-judgment and post-judgment interest; and
- M. Awarding such other relief as the Court may deem just and proper.

#### **COUNT V**

#### **Breach of Contract - Covenant of Good Faith and Fair Dealing**

161. Plaintiffs hereby incorporate by reference all other paragraphs of this Complaint as if

fully set forth herein.

162. Plaintiffs and other Class Members entered 90% Refundable Plan Residence and Care Contracts with their respective Springpoint CCC Facility and have performed their end of the bargain.

163. Under New Jersey law, a duty of good faith and fair dealing is an implied obligation applicable to every contract without regard to context. Good faith in contracting is the obligation to observe the spirit of the bargain, rather than merely the letter. Evasion of the spirit of the bargain under the pretext of acting under the letter of the agreement and the abuse of the drafter's power to specify terms have been judicially recognized as examples of bad faith in the performance of contracts.

164. When an agreement permits one party to unilaterally determine the extent of its required performance, an obligation of making that determination in good faith is fairly implied under the law. Here, under the terms and conditions of the 90% Refundable Plan Springpoint has created and requires residents to execute, each of the Springpoint CCC facilities has the power to unilaterally choose, and has chosen, to offer price reductions, sales or incentive programs on Entrance Fees that detrimentally impact on Plaintiff's Decedent's Estate's and other Class members' rights to receive 90% refunds of their Entrance Fee.

165. Each Springpoint CCC Facility has breached its respective Residence and Care Agreements' implied covenant of good faith and fair dealing by intentionally manipulating the Entrance Fees on relets through price reductions and other incentives and imposing reductions incurred in so doing on Plaintiffs and other Class Members without allowing any corresponding upside benefit should it determine to raise Entrance Fee amounts.



166. Plaintiffs further seek a judicial declaration that the living accommodation unit relet Entrance Fee charges set by Defendants are inconsistent with the terms of its implied contracts with the Plaintiff's decedent and the Class Members; and seek an order enjoining the Springpoint CCC Facilities, as well as any of their respective successors and assigns, from further acting in such manner that is inconsistent with the terms of its contracts with the Plaintiffs' decedents and the Class Members.

WHEREFORE, Plaintiffs, for themselves and other Class Members similarly situated, respectfully request the following relief:

- A. That this action be certified as a Class Action pursuant to N.J.S.A. §43-2, and that Plaintiffs be designated as Class representative;
- B. Judgment in favor of Plaintiffs and the Class, and against the Springpoint CCC Facility Defendants with an award of compensatory damages to those injured by the breach of covenant;
- C. An injunction preventing and directing Defendants from breaching the covenant in the future by ordering Defendants to base 90% Refunds on the amounts residents' actually paid as Entrance Fees and not upon any lesser amounts a successor living unit occupant might pay; and
- D. Such additional and further relief as this Court may deem just and appropriate.

**COUNT VI**  
**NEGLIGENT MISREPRESENTATION**

167. Plaintiffs hereby incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

168. At all times relevant hereto, Defendants negligently misrepresented the details of the 90% Refundable Plan to prospective residents.

169. Plaintiffs and other Class Members similarly situated reasonably and justifiably relied upon the representations made by Defendants regarding the details of the 90% Refundable Plan.

170. Plaintiff and other Class Members similarly situated have been damaged and have sustained ascertainable losses as a result of Defendants' negligent misrepresentations or omissions of material fact.

WHEREFORE, Plaintiff, for himself and other Class Members similarly situated, respectfully requests the following relief:

- A. That this action be certified as a Class Action pursuant to N.J.S.A. §43-2, and that Plaintiffs be designated as Class representatives;
- B. Judgment in favor of Plaintiffs and the Class, and against Defendants, jointly and severally, with an award of compensatory damages;
- C. Judgment in favor of Plaintiffs and the Class, and against Defendants with an award of punitive damages;
- D. Such additional and further relief as this Court may deem just and appropriate.

**COUNT VII**  
**FRAUD**

171. Plaintiffs hereby incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

172. At all times relevant hereto, Defendants intentionally or recklessly misrepresented the details of the 90% Refundable Plan to prospective residents.

173. Plaintiffs and other Class Members similarly situated reasonably and justifiably relied upon the representations made by Defendants regarding the details of the 90% Refundable Plan.

174. Plaintiffs and other Class Members similarly situated have been damaged and have sustained ascertainable losses as a result of Defendant's intentional and reckless misrepresentations or omissions of material fact.

WHEREFORE, Plaintiffs, for themselves and other Class Members similarly situated, respectfully request the following relief:

- A. That this action be certified as a Class Action pursuant to N.J.S.A. §43-2, and that Plaintiffs be designated as Class representatives;
- B. Judgment in favor of Plaintiffs and the Class, and against Defendants, jointly and severally, with an award of compensatory damages;
- C. Judgment in favor of Plaintiffs and the Class, and against Defendants with an award of punitive damages;
- D. An injunction preventing and directing Defendants from employing similarly fraudulent marketing practices in the future;
- E. An order of disgorgement of any profits or gains obtained as a result of the fraud;
- F. An order of restitution to Plaintiff's Estate and other Class Members to rectify the injuries and harm Plaintiffs' Estate and Class Members suffered as a proximate consequence of the Fraud;
- G. Such additional and further relief as this Court may deem just and appropriate.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury as to all claims in this action.

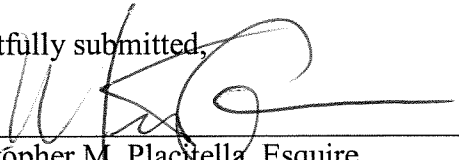
**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:5-1(c) and R. 4:25-4, Plaintiffs hereby designate Christopher M. Placitella, Cohen, Placitella & Roth, P.C. as trial counsel.

**RULE 4:5-1 CERTIFICATION**

Plaintiffs, by their attorneys, hereby certifies that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceedings. Plaintiffs are not currently aware of any other parties that should be joined in this particular action. In addition, Plaintiffs recognize their continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Respectfully submitted,



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Dated May 29, 2015