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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SACRAMENTO**

17
18 GLORIA SINGLE, and CALIFORNIA LONG
TERM CARE OMBUDSMAN ASSOCIATION
19 Plaintiffs,
20 v.
21 CATHEDRAL PIONEER CHURCH HOMES II,
22 CONGREGATIONAL CHURCH RETIREMENT
COMMUNITY, BIXBY KNOLLS TOWERS,
23 INC., GOLD COUNTRY HEALTH CENTER,
MAYFLOWER GARDENS HEALTH
24 FACILITIES, INC., STOCKTON
CONGREGATIONAL HOMES, INC.,
25 FOUNDATION PROPERTY MANAGEMENT,
INC., RHF MANAGEMENT, INC., RHF
26 FOUNDATION, and DOES 1-10,
Defendants.

Case No. 34-2017-00220058-CU-NP-GDS
**[PROPOSED] ORDER GRANTING IN
PART AND DENYING IN PART
PLAINTIFF CALIFORNIA LONG TERM
CARE OMBUDSMAN ASSOCIATION'S
MOTION FOR SUMMARY
ADJUDICATION**

Date: February 24, 2022
Time: 1:30 p.m.
Court: Hon. Richard K. Sueyoshi
Dept.: 53

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BY FAX

1 On February 24, 2022, Plaintiff California Long-Term Care Ombudsman Association's
2 ("CLTCOA") Motion for Summary Adjudication came before the above-entitled Court. Based on
3 the evidence and briefing submitted, the pleadings and the arguments of counsel, and for good
4 cause shown, the Court **HEREBY ORDERS** as follows:

5 1. Plaintiff CLTCOA's Motion for Summary Adjudication of its third cause of action for
6 declaratory relief alleged in the Third Amended Complaint is **GRANTED** as to
7 Defendant Cathedral Pioneer Church Homes II ("Pioneer House") for a declaration as
8 follows:

9 1) A facility's refusal to accept a resident back from the hospital after the hospital
10 clears the resident for return to the facility constitutes an involuntary transfer
11 under state and federal law.

12 2) A facility's refusal to readmit a resident under these circumstances triggers the
13 facility's obligation to comply with the "transfer and discharge" requirements
14 listed in 42 C.F.R. § 483.15.

15 3) The involvement of a third party in a resident's admission to the hospital does
16 not exempt the facility from complying with the transfer and discharge
17 requirements of 42 C.F.R. § 483.15.

18 4) Once a hospital clears a resident to return to the facility, the facility may not
19 refuse to accept the resident on the grounds that the facility cannot properly care
20 for the resident, or that the facility is still gathering information to assess the
21 resident's current condition.

22 2. Plaintiff's motion for summary adjudication as to the other Defendants is **DENIED**.

23 The Court's reasoning is as follows:

24 Plaintiff California Long-Term Care Ombudsman Association's ("CLTCOA") motion for
25 summary adjudication of its third cause of action for declaratory relief alleged in the Third
26 Amended Complaint is **GRANTED** as to Defendant Cathedral Pioneer Church Homes II ("Pioneer
27 House") and is **DENIED** as to all other Defendants.

28

1 **Background**

2 The operative complaint in this case is the Third Amended Complaint (“TAC”) filed by
3 Plaintiffs Gloria Single (“Ms. Single”) and CLTCOA (collectively, “Plaintiffs”). Ms. Single, now
4 deceased, was a resident of Pioneer House, and alleged that she was unlawfully discharged from
5 the facility in violation of Health and Safety Code section 1430(b). The Court previously granted
6 summary adjudication in favor of Ms. Single on her first cause of action for violation of Health and
7 Safety Code section 1430(b) against Defendant Pioneer House. (ROA 704.)

8 Plaintiff CLTCOA alleges that it is a membership organization made up of 35 Local Long-
9 Term Care (“LTC”) Ombudsman Programs, their staff, certified volunteers and program
10 supporters. (TAC, ¶ 11.) CLTCOA alleges that its mission is to provide a unified voice in advocacy
11 and assistance to Local LTC Ombudsman Programs in California to enable the local programs to
12 provide Ombudsman services to the residents of long term care facilities. (*Id.*) CLTCOA alleges
13 that among other tasks, CLTCOA and its member Ombudsman Programs have worked regularly to
14 combat unfair and illegal practices related to illegal evictions. (TAC, ¶ 13.)

15 The TAC alleges that Defendants “dumped” Ms. Single into Sutter Medical Center on
16 March 23, 2017, and refused to readmit her to Pioneer House once the hospital cleared her to return
17 home. (TAC, ¶¶ 6, 51, 52.) Plaintiffs allege that “Defendants circumvented the legal process for
18 evicting nursing home residents, which would have accorded Ms. Single numerous substantive and
19 procedural rights, including the right to remain at home while she challenged any decision to
20 discharge her, and the right to have an ombudsman from CLTCOA advocate for her and help
21 explain her rights and choices.” (*Id.*, ¶ 53.)

22 The TAC alleges that Ms. Single invoked her right to a hearing before the Department of
23 Health Care Services (“DHCS”) on May 17, 2017. (TAC, ¶ 54.) The hearing was conducted on
24 May 24, 2017, after which DHCS issued an order including, inter alia, that “Pioneer House must
25 immediately readmit Gloria Single to the first available bed.” (*Id.*, ¶ 56.) Pioneer House had not
26 readmitted Ms. Single and she had eventually agreed to placement at a different nursing facility.
27 (*Id.*, ¶ 57.) She still wished to return to Pioneer House to be reunited with her husband and so her
28 son may visit her more easily. (*Id.*, ¶ 60.)

1 Originally, CLTCOA joined Ms. Single in alleging three causes of action: (1) first cause of
2 action for violation of Health and Safety Code section 1430(b); (2) second cause of action for
3 violation of Business and Professions Code sections 17200, et seq.; and (3) third cause of action for
4 declaratory relief. Over a series of pleading challenges, the Court sustained without leave to amend
5 Defendants' demurrers to CLTCOA's first and second causes of action. (ROA 230, 317.) Thus,
6 CLTCOA currently maintains only the third cause of action for declaratory relief. In addition to
7 Defendant Pioneer House, the other Defendants are named as Congregational Church Retirement
8 Community, Bixby Knolls Towers, Inc., Gold Country Health Center, Mayflower Gardens Health
9 Facilities, Inc., Stockton Congregational Homes, Inc., Foundation Property Management, Inc.,
10 RHP Management, Inc., and RHP Foundation.

11 Incorporating all allegations of the Third Amended Complaint, CLTCOA alleges its cause
12 of action for declaratory relief as follows: "Through the facts alleged above, an actual and
13 justiciable controversy exists between the parties. Defendants contend that they were allowed to
14 discharge Mr. Single without following the statutory procedures for effecting a discharge, that they
15 did not have to honor Ms. Single's bedhold right because they asserted that she was dangerous and
16 that they were not required to follow the lawful order issued by DHCS requiring them to readmit
17 Ms. Single. Ms. Single contends that a facility may never discharge a resident without following all
18 of the statutorily required discharge procedures, that a facility never has any ground for refusing to
19 honor a resident's bedhold right, and that failure to follow a lawful readmission order by DHCS
20 violates a resident's rights. An actual controversy exists as to at least each of these issues and as to
21 whether Defendants violated Ms. Single's other rights as identified above. . . . A determination by
22 this Court will be useful in resolving the rights and obligations of the parties." (TAC, ¶¶ 93-94.)

23 CLTCOA now moves for summary adjudication against all Defendants on its sole
24 remaining claim for declaratory relief on the grounds that there is no triable issue of material fact.

25 Legal Standard

26 The Court must grant a motion for summary judgment if all the papers submitted show that
27 there is no triable issue as to any material fact and that the moving party is entitled to judgment as a
28 matter of law. (Code Civ. Proc. § 437c(c); *Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 35.) Section

1 437c(c) imposes an affirmative duty on a Court to grant summary judgment motion in an
2 appropriate case. (*Preach v. Moister Rainbow* (1993) 12 Cal. App. 4th 1441, 1450.) The Court
3 must decide if a triable issue of fact exists; if none does, and the sole remaining issue is one of law,
4 the Court has a duty to determine it. (*Pittelman v. Pearce* (1992) 6 Cal. App. 4th 1436, 1441; see
5 also *Seibert Sec Servs., Inc v. Superior Court* (1993) 18 Cal. App. 4th 394, 404.)

6 In evaluating a motion for summary judgment or summary adjudication, the court engages
7 in a three step process. The Court first identifies the issues framed by the pleadings. The pleadings
8 define the scope of the issues on a motion for summary judgment or summary adjudication. (*FPI
9 Dev. Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 381-382.) Because a motion for summary
10 judgment or summary adjudication is limited to the issues raised by the pleadings (*Lewis v.
11 Chevron* (2004) 119 Cal. App. 4th 690, 694), all evidence submitted in support of or in opposition
12 to the motion must be addressed to the claims and defenses raised in the pleadings. An issue that is
13 "within the general area of issues framed by the pleadings" is properly before the court on a
14 summary judgment or summary adjudication motion. (*Lennar Northeast Partners v. Buice* (1996)
15 49 Cal. App. 4th 1576, 1582-1583.) The Court cannot consider an unpleaded issue in ruling on
16 motion for summary judgment or adjudication. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 541.)
17 The papers filed in response to a party's motion for summary judgment may not create issues
18 outside the pleadings and are not a substitute for an amendment to the pleadings. (*Tsemetzin v.
19 Coast Federal Savings & Loan Assn.* (1997) 57 Cal. App. 4th 1334, 1342.)

20 Second, the Court is required to determine whether the moving party has met its burden.
21 Where a plaintiff seeks summary judgment (or adjudication), the burden is to produce admissible
22 evidence on each element of a "cause of action" entitling him or her to judgment. (CCP §
23 437c(p)(1); see *Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal. App. 4th 1282, 1287.) Plaintiffs
24 who bear the burden of proof at trial by a preponderance of evidence must, on summary judgment,
25 produce evidence that would require a reasonable trier of fact to find any underlying material fact
26 more likely than not. "[O]therwise, he would not be entitled to judgment as a matter of law."
27 (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851.) The burden is on plaintiff to
28

1 persuade the court that there is no triable issue of material fact. (*LLP Mortg. v. Bizar* (2005) 126
2 Cal. App. 4th 773, 776.)

3 Finally, once the moving party has met its burden, the burden shifts to the opposing party to
4 show that a material factual issue exists as to the cause of action alleged or a defense to it. (CCP §
5 437c(p); see generally *Bush v. Parents Without Partners* (1993) 17 Cal. App. 4th 322, 326-327.)
6 “There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable
7 trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with
8 the applicable standard of proof.” (*Aguilar, supra*, 25 Cal.4th at p. 845.) In ruling on the motion,
9 the court must consider the evidence and inferences reasonably drawn from the evidence in the
10 light most favorable to the party opposing the motion. (*Id.*, at p. 843.)

11 **Defendants’ Evidentiary Objections**

12 Defendants make a series of objections to various identified portions of the Declaration of
13 Leza Coleman, submitted by CLTCOA in support of its Statement of Undisputed Material Facts.
14 Defendants assert that portions of the Coleman declaration are objectionable as “irrelevant,”
15 “speculation,” “lacks foundation,” “lacks personal knowledge,” “prejudicial because the statement
16 is materially misleading,” “incomplete,” “improper lay witness opinion testimony,” and “hearsay.”
17 The Court has reviewed each of Defendants’ objections and CLTCOA’s responses thereto.
18 Defendants’ objections to the Coleman declaration are OVERRULED.

19 **Discussion**

20 CLTCOA seeks a declaration regarding the parties’ respective rights and obligations under
21 state and federal law governing the transfer and discharge of residents in skilled nursing facilities.
22 Specifically, CLTCOA requests declaratory relief of the following:

- 23 1) A facility’s refusal to accept a resident back from the hospital after the hospital
24 clears the resident for return to the facility constitutes an involuntary transfer
25 under state and federal law.
- 26 2) A facility’s refusal to readmit a resident under these circumstances triggers the
27 facility’s obligation to comply with the “transfer and discharge” requirements
28 listed in 42 C.F.R. § 483.15.

1 3) The involvement of a third party in a resident's admission to the hospital does
2 not exempt the facility from complying with the transfer and discharge
3 requirements of 42 C.F.R. § 483.15.

4 4) Once a hospital clears a resident to return to the facility, the facility may not
5 refuse to accept the resident on the grounds that the facility cannot properly care
6 for the resident, or that the facility is still gathering information to assess the
7 resident's current condition. (MPA, 7-8).

8 In support of its motion, CLTCOA puts forth three Undisputed Material Facts (UMFs): On
9 July 19, 2021, the Court (Judge Shama Mesiwala) issued its Order Granting in Part Plaintiff Gloria
10 Single's Motion for Summary Adjudication, finding Defendant Pioneer House liable for violating
11 California Health and Safety Code § 1430(b). (UMF 1.) CLTCOA's members are Local
12 Ombudsmen and their staff. (UMF 2.) CLTCOA's purpose is to act as a unified voice on behalf of
13 Local Ombudsmen and assist them in carrying out their statutory duties to protect residents' rights
14 and access to services. (UMF 3.)

15 Defendants do not dispute UMF No. 1 as to Defendant Pioneer House. However,
16 Defendants dispute UMF No. 1 "in all other respects" arguing that "this fact does not create a
17 justiciable controversy between CLTCOA and any *other* Defendant" and that these facts are "not
18 material to whether CLTCOA possesses associational standing to maintain a declaratory relief
19 action against Defendants or whether an actual controversy exists between any CLTCOA member
20 and any Defendant." (ROA 896, Defendants Responsive Separate Statement ("RS"), 2.)

21 Defendants do not dispute UMF No. 2. (RS, 2.)

22 Defendants dispute UMF No. 3 and argue that "this fact does not create a justiciable
23 controversy between CL TCOA and any other Defendant" and that "this fact is not material to
24 whether CLTCOA possesses associational standing to maintain a declaratory relief action against
25 Defendants or whether an actual controversy exists between any CLTCOA member and any
26 Defendant." (RS, 3.)

27 The Court finds that there are no genuine issues of material fact with respect to UMF Nos. 1
28 through 3. Defendants' stated "dispute" in relation to UMF Nos. 1 and 3 are not disputes of the

1 facts themselves. That is, Defendants do not dispute the truth of UMF Nos. 1 or 3. Rather,
2 Defendants' stated "dispute" is regarding the materiality and legal significance of these otherwise
3 undisputed facts. While such "disputes" are matters for argument, they do not affect the undisputed
4 nature of UMF Nos. 1 and 3.

5 **CLTCOA's Associational Standing**

6 As a preliminary matter, the Court notes that CLTCOA argues there is no triable issue
7 bearing on CLTCOA's associational standing to pursue declaratory relief. (MPA, 12-17.)
8 CLTCOA argues this point in its moving papers given that Defendants have asserted that CLTCOA
9 lacks standing throughout this litigation.

10 Defendants' opposition brief mentions "associational standing" four times. (Opp., 2:14;
11 3:13-14; 10:3.) In their opposition, Defendants' do not specifically address the three-part legal test
12 for associational standing under California law. Defendants' first reference to "associational
13 standing" is merely an argument that CLTCOA bears the burden of proving it. (Opp., 2:13-14.)
14 Defendants' second reference to "associational standing" summarily states, "[n]ow that the time
15 has come for CLTCOA to present actual evidence of its associational standing allegations and
16 claims of an 'actual controversy' between the parties, it has demonstrated it cannot do so." (Opp.,
17 3:13-15.) Defendants' last two references to "associational standing" are on the final page of their
18 opposition where Defendants argue that "[i]n the context of associational standing, the 'irreducible
19 constitutional minimum' requires a plaintiff to allege a particularized injury...." (Opp., 10:3-4.)
20 Defendants then state that CLTCOA has failed to show "the requisite injury sufficient to have
21 standing in its own right pursuant to the three part associational standing test established in *Hunt v.*
22 *Wash. State Apple Adver. Comm'n* (1977) 432 U.S. 333." (Opp., 10:11-14.)

23 Because CLTCOA's associational standing is a threshold issue, the Court shall address it
24 first.

25 Importantly for this case and this motion, this is not the first time the Court has addressed
26 the question of CLTCOA's associational standing to maintain its cause of action for declaratory
27 relief. On June 27, 2018, the Court (Judge Steven Rodda) overruled Defendants' demurrer to
28 CLTCOA's third cause of action for declaratory relief in Plaintiffs' then Second Amended

1 Complaint. (ROA 230.) Defendants' challenge was that CLTCOA was not a proper party to the
2 Second Amended Complaint because it lacked standing. The Court sustained Defendants' demurrer
3 to CLTCOA's first and second causes of action. However, the Court overruled Defendants'
4 demurrer to CL TCOA's third cause of action for declaratory relief on the specific ground that
5 taking CLTCOA's factual allegations as true and given the law applicable to its Local Ombudsmen
6 members, CLTCOA's Second Amended Complaint satisfied the elements of associational standing
7 under California law.

8 Specifically, in its June 27, 2018 order, the Court held as follows:

9 Associations like CLTCOA possess legal standing in certain cases. "Associational standing
10 exists when: '(a) the association's members would otherwise have standing to sue in their
11 own right; (b) the interests the association seeks to protect are germane to the organization's
12 purpose; and (c) neither the claim asserted nor the relief requested requires the participation
13 of individual members in the lawsuit.'" (*Amalgamated Transit Union, Local 1756, AFL-
CIO v. Superior Court [Amalgamated]* (2009) 46 Cal.4th 993, 1004, brackets omitted.)

13 ***

14 The SAC sets up controversies over whether Defendants may discharge patients without
15 following statutory procedures and whether Defendants may "refuse to honor a resident's
16 bedhold right[.]" (SAC, ¶ 91.) Notwithstanding Defendants' arguments to the contrary, the
17 allegations can be construed to establish CLTCOA's associational standing. The interests
18 CLTCOA seeks to protect are germane to its purpose. Furthermore there does not appear to
19 be any need for Local Ombudsmen programs to participate in the action for declaratory
20 relief.

21 With respect to the third element of associational standing, i.e., that CLTCOA's members
22 would otherwise have standing to sue in their own right, the court is mindful that Local
23 Long-Term Care Ombudsmen and the programs they operate are a creation of federal law in
24 the first instance. Subdivision (a)(5) of 42 U.S.C. § 3058g empowers State Ombudsmen to
25 designate Local Ombudsmen to perform the following functions:

- 22 (i) provide services to protect the health, safety, welfare[,] and rights of residents;
- 23 (ii) ensure that residents in the service area of the entity have regular, timely access to
24 representatives of the program and timely responses to complaints and requests for
25 assistance;
- 26 (iii) identify, investigate, and resolve complaints made by or on behalf of residents that
27 relate to action, inaction, or decisions, that may adversely affect the health, safety,
28 welfare, or rights of the residents;

1 (iv) represent the interests of residents before government agencies and seek
2 administrative, legal, and other remedies to protect the health, safety, welfare, and
rights of the residents;

3 [¶¶]

4 (vii) identify, investigate, and resolve complaints described in clause (iii) that are made by
5 or on behalf of residents with limited or no decision making capacity and who have no
6 known legal representative, and if such a resident is unable to communicate consent for an
7 Ombudsman to work on a complaint directly involving the resident, the Ombudsman shall
8 seek evidence to indicate what outcome the resident would have communicated (and, in the
absence of evidence to the contrary, shall assume that the resident wishes to have the
resident's health, safety, welfare, and rights protected) and shall work to accomplish that
outcome[... ¶.]

9 The court is not persuaded that these responsibilities do not provide CLTCOA's members
10 with a legal interest sufficient to support a declaratory relief cause of action. Hence, the
demurrer is overruled.

11 (ROA 230, 3-6).

12 The allegations contained in the Second Amended Complaint that established CLTCOA's
13 associational standing for proposes of overruling Defendants' demurrer remain essentially
14 unchanged, and are even expanded, in the Third Amended Complaint. (TAC, ¶¶ 11-15.) Now,
15 CLTCOA moves for summary adjudication on the same declaratory relief cause action, this time
16 relying upon UMF Nos. 1 through 3. Again, this includes the material fact that "CLTCOA's
17 purpose is to act as a unified voice on behalf of Local Ombudsmen and *assist them in carrying out*
18 *their statutory duties to protect residents' rights and access to services.*" (UMF 3 (emphasis
19 added).) To support its undisputed material facts, CLTCOA provides the declaration of its
20 Executive Director, Leza Coleman. As to the functions performed by Local Ombudsman, they
21 continue to exist as a matter of law as recited by the Court in ruling on Defendants' demurrer.

22 In examining each element of associational standing under California law, the Court finds
23 that CLTCOA has established with undisputed material facts its associational standing to allege its
24 declaratory relief cause of action as to Defendant Pioneer House. As to the other Defendants, the
25 Court addresses CLTCOA's claim in the latter section of this ruling regarding the elements of
26 declaratory relief.

27 1. The association's members would otherwise have standing to sue in their own right.
28

1 CLTCOA argues that it is undisputed that its members are Local Long-Term Care
2 Ombudsman Programs and their staff. (UMF 2; RS, 3.) Citing the same law referenced by the
3 Court on demurrer, CLTCOA argues that its members would have standing to pursue the
4 declaratory relief claim because of the responsibilities placed on Local Long-Term Care
5 Ombudsmen pursuant to 42 U.S.C. § 3058g(a)(5). (MPA, 13.) CLTCOA contends that because an
6 individual Local Long-Term Care Ombudsman would have standing to seek a declaration of long-
7 term residents' rights and Defendants' corresponding obligations under federal and state law, so too
8 does CLTCOA. (MPA, 14.)

9 In their opposition, Defendants do not specifically address this element in the context of
10 discussing the three-part test for associational standing. Rather, Defendants provide a series of
11 arguments why they believe CLTCOA has not established an "actual controversy" as an element of
12 the claim for declaratory relief for either CLTCOA or its members, without separately analyzing
13 CLTCOA's standing from that of its members. The Court considers Defendants' arguments as they
14 pertain to CLTCOA's members.

15 First, Defendants argue that the Coleman declaration is speculative, irrelevant and
16 conclusory such that it cannot provide any basis to establish an "ongoing relationship" or an
17 "ongoing dispute" so as to establish an "actual controversy." As indicated above, the Court has
18 overruled Defendants' objections to the Coleman declaration.

19 Next, Defendants argue that to the extent the Coleman declaration is intended to support the
20 finding of an "actual controversy," her declaration is contradicted by her deposition testimony.
21 (Opp., 6.) Here, Defendants point to a series of questions asked to Coleman where Defendants'
22 counsel asked, "*other than this case*," if Coleman was aware "of defendant's refusal to accept
23 residents back from the hospital after the hospital cleared the resident to return to the facility," "of
24 defendant's failure to comply with the transfer and discharge requirements," or where a "third party
25 removed the resident from the facility," etc. (*Id.*) Coleman responded that "other than this case,"
26 she was not aware of other cases; and that she did know of allegations and complaints of the nature
27 referenced by Defendants' counsel, but that she did not know of specific complaints regarding the
28 named defendants. (*Id.*) Defendants add that Coleman confirmed the local ombudsman member of

1 the region associated with Pioneer House “had no record of an ombudsman conducting a complaint
2 investigation with Ms. Single.” (*Id.*) Defendants appear to argue that the absence of these facts
3 demonstrates that CLTCOA (and its members) cannot prove an “actual controversy” and thereby,
4 cannot maintain its cause of action for declaratory relief.

5 The Court finds this argument to be unpersuasive. As discussed above, the Court ruled in its
6 June 27, 2018 order that the allegations of CLTCOA’s Second Amended Complaint, combined
7 with the law setting forth the responsibilities of Local Ombudsmen, were sufficient for CLTCOA
8 to maintain its cause of action for declaratory relief. The Second Amended Complaint did not
9 include factual allegations that provided affirmative answers to the questions that Defendants asked
10 of Coleman in her deposition. Yet, the Court overruled Defendants’ demurrer. Like its Second
11 Amended Complaint, CLTCOA’s now-operative Third Amended Complaint also does not include
12 such allegations. As evident from the Court’s prior ruling on demurrer, the allegations that
13 Defendants contended were required to establish standing - and now contend must be proved - have
14 already been determined by the Court to be unnecessary. Indeed, if the allegations were necessary
15 to survive a demurrer specifically challenging CLTCOA’s standing (and now necessary to prove
16 the claim on summary adjudication), Defendants would have succeeded on their demurrer to
17 CLTCOA’s declaratory relief cause of action. They did not. Thus, Defendants’ raising of this
18 argument effectively re-argues an issue already ruled upon by the Court.

19 Defendants also argue that CL TCOA must show that it has “suffered injury in fact, that the
20 injury is fairly traceable to the defendant, and that the injury will likely be redressed by a favorable
21 decision” pursuant to *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560-561; and *Valley*
22 *Forge Christian College v. Americans United for Separation of Church and State, Inc.* (1982) 454
23 U.S. 464, 471-472. (Opp., 10.) They argue that because this is not established, then no CLTCOA
24 member can show the requisite injury to have standing in its own right pursuant to the 3-part
25 associational standing test. (*Id.*)

26 Among other points, CLTCOA replies that it is not required to show an “injury-in-fact” in
27 order to seek declaratory relief in a California court under California law and that Defendants are
28 relying on Article III standing requirements that do not apply in this instance. (*Id.*)

1 Similar to Defendants' arguments regarding the Coleman deposition, Defendants' argument
2 that CLTCOA members cannot have standing without (alleging and) proving an "injury in fact,"
3 was dispensed with by the Court's overruling of Defendants' demurrer challenging CLTCOA's
4 allegations of associational standing. No allegations of an "injury in fact" were required then to
5 establish CLTCOA's associational standing. And thus, no such proof is required now to establish
6 the same.

7 As to the ultimate question presented by this factor of the associational standing analysis,
8 the Court finds that CL TCOA has established with undisputed material facts that its members
9 would otherwise have standing to sue in their own right as to Defendant Pioneer House. Again,
10 UMF No. 1 references this Court's order issued on July 19, 2021, granting Ms. Single's motion for
11 summary adjudication finding Defendant Pioneer House liable for violating California Health and
12 Safety code § 1430(b). The Court's July 19, 2021 order establishes that Pioneer House is a skilled
13 nursing facility as defined in subdivision (c) of Health and Safety Code section 1250, and that
14 Pioneer House is liable under Health and Safety Code section 1430(b) in connection with its
15 improper refusal to readmit and improper discharge of a resident (Ms. Single). These facts are
16 undisputed as to Defendant Pioneer House. (RS, 2.) UMF No. 2 states that "CLTCOA's members
17 are Local Ombudsmen and their staff" and cites to paragraph 3 of Coleman's declaration. This fact
18 is also undisputed. (RS, 3) Similarly undisputed are the provisions of 42 U.S.C. § 3058(g)(a)(5)
19 which set forth the duties and responsibilities of Local Ombudsmen as indicated above.

20 Considering the undisputed material facts and the applicable law, the Court finds that
21 CLTCOA's members would otherwise have standing to sue in their own right for declaratory relief
22 as to Defendant Pioneer House. Consistent with the Court's June 27, 2018 order, the Court finds
23 that a CLTCOA member would not have to prove additional facts beyond those set forth in the
24 Third Amended Complaint (and which have now been established by the undisputed material facts)
25 to have standing to sue in their own right for declaratory relief as to Defendant Pioneer House.

1 **CLTCOA's Cause of Action for Declaratory Relief against all Defendants**

2 A cause of action for declaratory relief has two elements: "(1) a proper subject of
3 declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights
4 or obligations of a party." (*Brownfield v. Daniel Freeman Marina Hosp.* (1989) 208 Cal.App.3d
5 405, 410.)

6 1. Proper Subject of Declaratory Relief

7 CLTCOA argues that its claim is a proper subject of declaratory relief because it presents a
8 pure question of law as to the parties' respective rights and obligations under state and federal law
9 governing the transfer and discharge of residents in skilled nursing facilities. (MPA; 6-9.)
10 Defendants' opposition does not directly address this element or otherwise indicate that the
11 determination of the parties' respective rights and obligations under law is not and/or cannot be a
12 *proper subject* for declaratory relief.

13 The Court finds that the matter presented by CLTCOA's declaratory relief cause of action is
14 a proper subject of declaratory relief. In general, "[a] controversy over an interpretation of statute,
15 and the duties that statute imposes, is a proper basis for a declaratory relief claim." (*Redwood Coast*
16 *Watersheds Alliance v. State Bd. Of Forestry & Fire Prot.* (1999) 70 Cal.App.4th 962, 969.)
17 Similarly, "[d]eclaratory relief is appropriate to obtain judicial clarification of the parties' rights
18 and obligations under applicable law." (*Californians for Native Salmon Ass'n v. Department of*
19 *Forestry* (1990) 221 Cal.App.3d 1419, 1427.) Here, the declarations sought by CLTCOA's
20 declaratory relief cause of action and its motion are declarations of Defendants' obligations under
21 applicable law. (MPA, 7-8.) Therefore, the subject of CLTCOA's claim is a proper subject of
22 declaratory relief.

23 2. Actual Controversy

24 Declaratory relief is permitted "in cases of actual controversy relating to the legal rights and
25 duties of the respective parties." Code Civ. Proc. § 1060; see also Code Civ. Proc. § 1061
26 [providing that the Court may decline to exercise its power where declaratory relief "is not
27 necessary or proper at the time under all the circumstances."] "Whether a claim presents an 'actual
28 controversy' within the meaning of [CCP] section 1060 is a question of law. ..." (*Environ'l*

1 *Defense Proj. of Sierra County v. County of Sierra* (2008) 159 Cal.App.4th 877, 885.) In *Gafcon,*
2 *Inc. v. Posner & Associates*, the Court recognized that “declaratory relief ‘operates prospectively,
3 and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead
4 to repudiation of obligations, invasions of rights or commissions of wrongs; in short, the remedy is
5 to be used in the interests of preventative justice, to declare rights rather than execute them.’”
6 (*Gafcon, Inc. v. Posner & Associates* (2002) 98 Cal.App.4th 1388, 1403, citations omitted; see also
7 *Babb v. Superior Court* (1971) 3 Cal.3d 841,848 [same]; *Conova v. Trustees of Imp’l Irrig. Dist.*
8 *Emp’ee Pen. Plan* (2007) 150 Cal.App.4th 1487, 1497 [same].)

9 CLTCOA argues that its claim presents an “actual controversy” because the parties have an
10 ongoing relationship and an ongoing dispute over their respective rights and obligations. (MPA, 9-
11 11.) Citing its UMF Nos. 2 and 3, CLTCOA argues that “both parties are repeat players under
12 relevant state and federal laws governing the transfer and discharge of skilled nursing facility
13 residents. Defendants manage and operate long-term care facilities, while CLTCOA’s members are
14 required by federal and state law to protect the rights and interests of residents in Defendants’ long-
15 term care facilities.” (MPA, 10.)

16 At the outset, the Court finds that CLTCOA has failed to present, in the context of this
17 motion, undisputed material facts proving an “actual controversy” between CLTCOA on the one
18 hand, and the Defendants *other than Pioneer House* - namely, Defendants Congregational Church
19 Retirement Community, Bixby Knolls Towers, Inc., Gold Country Health Center, Mayflower
20 Gardens Health Facilities, Inc., Stockton Congregational Homes, Inc., Foundation Property
21 Management, Inc., RHF Management, Inc., and RHF Foundation, on the other hand. As discussed
22 above, CLTCOA offers three undisputed material facts. CLTCOA’s UMF Nos. 2 and 3 are focused
23 on CLTCOA itself and do not mention any Defendants. Nor does the declaration of Leza Coleman,
24 which is the evidentiary foundation of UMF Nos. 2 and 3. The remaining UMF No. 1, states that
25 “[o]n July 19, 2021, the Court issued its Order Granting in Part Plaintiff Gloria Single’s Motion for
26 Summary Adjudication finding Defendant Pioneer House liable for violating California Health and
27 Safety Code section 1430(b).” Defendants do not dispute UMF No. 1 as to Defendant Pioneer
28 House. (RS, 2.) However, UMF No. 1 does not mention any Defendants other than Pioneer House.

1 While the absence of undisputed material facts related to the other Defendants is enough to
2 defeat CLTCOA's motion as to those Defendants, the evidentiary basis on which CLTCOA relies
3 for its UMFs also provides no support to its motion in this regard. The evidentiary basis for UMF
4 No. 1 is the Court's July 19, 2021 order. (Borden Decl., Ex. A) As CLTCOA correctly states in
5 UMF No. 1, the order finds that Ms. Single is entitled to judgment as a matter of law against
6 *Defendant Pioneer House* for violation of Health and Safety Code section 1430(b). That order
7 relies upon Ms. Single's three undisputed material facts, all of which relate to *Defendant Pioneer*
8 *House* and its actions. (Borden Decl., Ex. A at 22.) The third undisputed material fact states that
9 "Defendants did not seek a writ of mandate to try to overturn DHCS's Order finding that Pioneer
10 house illegally discharged Ms. Single by leaving her in a hospital." (*Id.*) While the reference to
11 "Defendants" is in plural, the undisputed material fact does not provide any information regarding
12 who the referenced Defendants are, what they do, and what their relationship is to CLTCOA. While
13 the DHCS order served as an evidentiary basis for Ms. Single's first and second undisputed
14 material facts (Borden Decl., Ex. A at 22), even if it had been a basis for CLTCOA's motion here,
15 and could be considered, the DHCS order, notably, does not mention the Defendants other than
16 Pioneer House.

17 From its supporting memorandum of points and authorities, it appears that CLTCOA relies
18 on two documents to provide evidence regarding the involvement of the Defendants other than
19 Pioneer House. (MPA, 3:26.) One document is a prior motion for summary judgment/adjudication
20 filed by Defendants. (ROA 348.) The other is the Court's (Judge David Brown) January 23, 2020
21 ruling on that motion. (ROA 541.) This Court finds that such reference in CLTCOA's
22 memorandum of points and authorities is insufficient for the purposes of establishing with clarity
23 the offered undisputed material facts upon which CLTCOA seeks summary adjudication against
24 such Defendants. CLTCOA is required to present what it believes to be the specific undisputed
25 material facts supporting its motion so that such matters can be responded to and properly vetted.
26 In contrast, CLTCOA found it proper to state UMF No. 1 specific to Defendant Pioneer House and
27 to supply as evidence in support of UMF No. 1, the Court's July 19, 2021 order, which made
28 specific findings as to Pioneer House. Yet CLTCOA did not do the same for other Defendants. In

1 any event, even if CLTCOA had asserted undisputed material facts as to the other Defendants and
2 supplied the Court's January 23, 2020 order in support thereof, the Court notes that the recitations
3 therein regarding each entity's connection to this dispute are not the same as that of Defendant
4 Pioneer House, nor are the facts relating to each Defendant the same among them. Thus, the
5 analysis as to the other Defendants might not be the same as the analysis for Pioneer House. This
6 only further highlights the necessity that CL TCOA present exactly what undisputed material facts
7 it asserts as to each Defendant other than Pioneer House and why CLTCOA has an "ongoing
8 relationship" and "ongoing dispute" with each Defendant so as to constitute an "actual
9 controversy."

10 In sum, because CLTCOA has not provided any undisputed material facts describing the
11 Defendants other than Pioneer House, for purposes of this motion, CLTCOA has not established an
12 ongoing relationship as a predicate to an "actual controversy" with those Defendants. Therefore,
13 the Court DENIES the motion for summary adjudication as to Defendants Congregational Church
14 Retirement Community, Bixby Knolls Towers, Inc., Gold Country Health Center, Mayflower
15 Gardens Health Facilities, Inc., Stockton Congregational Homes, Inc., Foundation Property
16 Management, Inc., RHF Management, Inc., and RHF Foundation.

17 The Court next returns to CLTCOA's motion as directed to Defendant Pioneer House. As
18 indicated above, the Court has found that CLTCOA's members would have standing to sue in their
19 own right for declaratory relief as to Defendant Pioneer House. The Court has also found that
20 CLTCOA has established associational standing to bring its declaratory relief claim against
21 Defendant Pioneer House. The Court addresses here Defendants' remaining arguments regarding
22 CLTCOA's establishment of an "actual controversy."

23 Defendants argue because Pioneer House had no record of a controversy with any other
24 party other than Ms. Single, that there is no "actual controversy" between any of CLTCOA's
25 members and any Defendant. (Opp., 5.) The Court rejects this argument. The nature and purpose of
26 declaratory relief Code of Civil Procedure § 1060 authorizes a court to grant declaratory relief
27 which is an equitable remedy that exists "to set controversies at rest before they lead to repudiation
28 of obligations, invasion of rights or commission of wrongs." (*Environ'l Defense Proj., supra*, 158

1 Cal.App.4th at p. 884 (citation omitted).) “It is to be used in the interests of preventive justice, to
2 declare rights rather than execute them.” (*Id.*) Under California law, “[a]ny person ... who desires a
3 declaration of his or her rights or duties with respect to another ... may ask for a declaration ... and
4 the court may making a binding declaration of these rights or duties.” (Code Civ. Proc. § 1060.)

5 Defendants argue that CLTCOA’s assertion that “Defendants manage and operate long-
6 term care facilities that are regulated by state and federal law, and CLTCOA’s members are
7 required by state and federal law to protect the rights of residents in Defendants’ long-term care
8 facilities” is insufficient to establish that CLTCOA has an “ongoing dispute” with Pioneer House,
9 or any other facility defendant, regarding the interpretation and/or enforcement of any of specific
10 resident’s rights regarding discharges or transfers. (Opp., 7-8.)

11 CLTCOA analogizes the instant matter to *Environ’l Defense Proj., supra*, which
12 determined an actual controversy remained between the parties because they continued to disagree
13 in their interpretations of the Government Code even after the environmental group plaintiff had
14 already resolved its specific dispute with the county over an individual landowner’s zoning request.
15 (158 Cal.App.4th at p. 886.) CLTCOA argues an “actual controversy” and “ongoing dispute”
16 remain here because the parties disagree over the interpretation of a facility’s obligations under 42
17 C.F.R. § 483.15. (MPA, 10-11; Reply, 3-4.)

18 The Court agrees with CLTCOA insofar as it has established a basis for declaratory relief as
19 to Defendant Pioneer House.

20 Defendants dispute that the UMFs show the existence of an “ongoing relationship” between
21 CLTCOA and any Defendant or identify an instance where any act by a Defendant thwarted or
22 otherwise encumbered CLTCOA’s purpose. (Opp., 7)

23 As explained earlier, the Court agrees insofar as finding that CLTCOA has not established
24 summary adjudication as to the Defendants other than Pioneer House. The Court disagrees with
25 Defendants’ argument in relation to Pioneer house.

26 Again, UMF No.3 states: “CLTCOA’s purpose is to act as a unified voice on behalf of
27 Local Ombudsmen and assist them in carrying out their statutory duties to protect residents’ rights
28

1 and access to services.” In support, CLTCOA cites to paragraphs 5-7 of Coleman’s declaration.

2 Those paragraphs state as follows:

3 5. CLTCOA’s purpose is to provide a unified voice in advocacy to the Local Ombudsman
4 Programs and assist them in carrying out their duties to protect elderly residents' rights and
5 access to services. CLTCOA's assistance to Local Ombudsmen comes in many forms.
6 CLTCOA appears on behalf of the Local Ombudsmen in commenting on, supporting, or
7 opposing legislation that impacts long-term care residents, and files amicus curiae briefs on
8 issues that affect all Local Long-Term Care Ombudsmen.

9 6. CLTCOA helps conserve the resources of and lessen the burdens on each individual
10 Local Ombudsmen Program by undertaking tasks and projects common to all Programs,
11 thereby reducing or eliminating the need for each Program's participation and/or the
12 duplication of similar work and efforts across Programs. For example, CLTCOA recently
13 secured funding to create an online certification training, available for Local Ombudsman
14 Programs to use to certify their staff and volunteers. This standardized process will help
15 reduce the time and resources that each Local Program would otherwise need to expend to
16 train and certify its staff members.

17 7. As noted on the Government's website, one of the issues that Local Long-Term Care
18 Ombudsmen help residents and their families with is “Improper transfer or discharge of a
19 resident.” One of the reasons that CLTCOA decided to bring this case is that resident
20 dumping is an unlawful practice that injures all our members. When a Local Long-Term
21 Care Ombudsman receives a complaint about an illegal discharge, they have to investigate
22 the claim, advise the resident about their rights, and try to persuade the facility to follow the
23 law. These efforts drain the already limited resources that Local Long-Term Care
24 Ombudsmen have. All too often, facilities refuse to follow the law anyway. (Coleman Decl.
25 ¶¶ 5-7.)

26 Thus, CLTCOA’s purpose includes assisting Local Ombudsmen in “carrying out their
27 statutory duties to protect residents’ rights and access to services.” As discussed above, Defendants
28 do not dispute that this is CLTCOA’s purpose, but rather, dispute its legal significance and
materiality to the issues in this motion. The Court has found this fact to be undisputed. The Court’s
July 19, 2021 order establishes that Pioneer House is a skilled nursing facility as defined in
subdivision (c) of Health and Safety Code section 1250, and that Pioneer House is liable under
Health and Safety Code section 1430(b) in connection with its improper refusal to readmit and
improper discharge of a resident. For the reasons previously discussed, the Court finds that
CLTCOA has established with undisputed facts an “actual controversy” with Defendant Pioneer
House.

1 3. Declarations Sought by CLTCOA.

2 As referenced earlier, CLTCOA seeks a declaration regarding the parties' respective rights
3 and obligations under state and federal law governing the transfer and discharge of residents in
4 skilled nursing facilities. Specifically, CLTCOA requests declaratory relief of the following:

- 5 (1) A facility's refusal to accept a resident back from the hospital after the hospital clears
6 the resident for return to the facility constitutes an involuntary transfer under state and
7 federal law.
8 (2) A facility's refusal to readmit a resident under these circumstances triggers the facility's
9 obligation to comply with the five "transfer and discharge" requirements listed in 42
10 C.F.R. § 483.15.
11 (3) The involvement of a third party in a resident's admission to the hospital does not
12 exempt the facility from complying with the transfer and discharge requirements of 42
13 C.F.R. § 483.15.
14 (4) Once a hospital clears a resident to return to the facility, the facility may not refuse to
15 accept the resident on the grounds that the facility cannot properly care for the resident,
16 or that the facility is still gathering information to assess the resident's current
17 condition. (MPA, 7-8):

18 Defendants do not contest the language of the declarations sought by CLTCOA. The Court
19 finds that the declarations sought are within the scope of CLTCOA's allegations and the general
20 issues framed by the Third Amended Complaint.

21 The Court does not rule on CLTCOA's evidentiary objections filed in support of their reply
22 as they are immaterial to the Court's adjudication of the motion pursuant to CCP § 437c(q).

23 **The Parties' Oral Arguments**

24 The Court has considered the parties' respective oral arguments. Plaintiff CLTCOA and
25 Defendants each requested oral argument, challenging different portions of the Court's tentative
26 ruling. The tentative ruling is augmented as follows and otherwise affirmed.

27 Plaintiff CLTCOA challenged the tentative ruling's denial of its motion for summary
28 adjudication as to the Defendants other than Pioneer House. CLTCOA argued, among other points,
that it is a mere "incremental step" that the Court should take to find in CLTCOA's favor on its
declaratory relief cause of action as to the Defendants other than Pioneer House. CLTCOA argues
that there have been other filings through the course of this litigation, beyond the two addressed by
the Court's tentative ruling, that also indicate Defendants' collective position as to the claims in

1 this case. As the Court indicated during oral argument, the fact that there may be various filings in
2 this litigation by Defendants asserting their position does not affect the Court's finding that
3 CLTCOA bears the burden of proof on its motion for summary adjudication and has not satisfied
4 its burden here as to the Defendants other than Pioneer House. Therefore, the Court affirms the
5 tentative ruling.

6 Defendant Pioneer House challenged the tentative ruling's granting of CLTCOA's motion
7 for summary adjudication. Specifically, Pioneer House argued that its position that CLTCOA must
8 prove that its members suffered an "injury in fact" for the Court to find CLTCOA's associational
9 standing to obtain declaratory relief was not an issue decided and thereby foreclosed by the Court's
10 June 27, 2018 (Judge Steven Rodda) order on demurrer. Pioneer House argued that the Court's
11 June 27, 2018 order overruling Defendants' demurrer to the CLTCOA's declaratory relief claim
12 "left open" the necessity that CLTCOA prove an "injury in fact" in order to prove associational
13 standing. Pioneer House argues that the Court's June 27, 2018 order requires, by implication, that
14 CLTCOA now prove that its members suffered an "injury in fact" in order for CLTCOA to obtain
15 summary adjudication.

16 The Court is not persuaded by Pioneer House's argument. As it explained in its tentative
17 ruling, the Court finds that the June 27, 2018 order effectively settled the issue of what CLTCOA
18 needed to allege (and thus, now must prove) in order to establish its associational standing to obtain
19 declaratory relief against Pioneer House as well as the other Defendants. As a preliminary matter,
20 in addressing CLTCOA's then second cause of action for violation of Business & Professions Code
21 section 17200, et seq., the Court applied the elements of associational standing under California
22 law and found that the allegations in the Second Amended Complaint did not establish the element
23 that CLTCOA's Local Ombudsman members would have standing to sue in their own right. In
24 particular, the Court stated that "it is unclear how any of its Local Ombudsmen members have
25 suffered the economic injury to state unfair competition." Specifically referring to 42 U.S.C. §
26 3058(g), the Court stated, "[t]o the extent a Local Ombudsman within CLTCOA's membership
27 expended funds assisting Single or other long term care residents, it is unclear how that assistance
28

1 constitutes an injury.” The Court sustained Defendants’ demurrer to CLTCOA’s second cause of
2 action under Business and Professions Code section 17200.

3 In contrast, when the Court applied the same associational standing elements under
4 California law to CLTCOA’s third cause of action for declaratory relief, the Court did not require a
5 similar allegation of an “injury in fact.” At the outset, the Court cited the test for associational
6 standing under California law and also observed the differently stated test for “organizational
7 standing” for purpose of Article III under federal law. The Court observed that federal cases have
8 stated that “an organization may satisfy the Article III requirement of injury in fact if it can
9 demonstrate: (1) frustration of its organizational mission; and (2) diversion of its resources to
10 combat the particular housing discrimination in question.” (*Smith v. Pac. Props. & Dev. Corp.* (9th
11 Cir. 2004) 358 F.3d 1097, 1105.)” After observing California law on associational standing and
12 federal authorities on “organizational standing,” the Court proceeded to apply the three-element test
13 under California law. The Court held that the Second Amended Complaint “sets up controversies
14 over whether Defendants may discharge patients without following statutory procedures and
15 whether Defendants may ‘refuse to honor a resident’s bedhold right[.]’” The June 27, 2018 order
16 explains that the allegations of the Second Amended Complaint, coupled with the duties and
17 responsibilities imposed on Local Ombudsmen under law, establish that CLTCOA’s members
18 would have standing to sue in their own right, thereby satisfying that element of associational
19 standing. Thus, the Court’s June 27, 2018 order addressed the issue and cannot now be construed
20 as requiring the proof of additional allegations that did not exist in the Second Amended Complaint
21 (and similarly do not exist in the Third Amended Complaint).

22 Pioneer House next argued that the Second Amended Complaint can be construed as
23 requiring proof of the type of “injury in fact” Pioneer House claims is required because in
24 paragraph 13, the Second Amended Complaint alleged that “CLTCOA’s member organizations
25 expend precious time actively helping residents, including Ms. Single, obtain administrative orders
26 securing readmission to their homes after temporary hospitalization” (now appearing in paragraph
27 15 of the Third Amended Complaint). Pioneer House argued that because this allegation has not
28 been established (and is also proved untrue by Pioneer House’s separate evidence), CLTCOA

1 cannot now establish associational standing. However, there is no indication in the June 27, 2018
2 order that this allegation constitutes an “injury in fact” and/or that it must be proved for CLTCOA
3 to have associational standing. While the Court’s analysis of second cause of action under Business
4 & Professions Code section 17200 focused on the adequacy of allegations of an economic injury in
5 fact, the Court’s analysis of the third cause of action indicated no such similar reliance. Further, the
6 Court’s overruling of Defendants’ demurrer to the third cause of action was for *all of the*
7 *Defendants*, not only Pioneer House. The Second Amended Complaint included no such similar
8 allegations as to any of the other Defendants. For example, there are no allegations that Ms. Single
9 was a resident at any of the other facilities operated by other Defendants, much less allegations that
10 CLTCOA expended resources to secure Ms. Single’s readmission to such other facilities.
11 Additionally, some of the other Defendants do not operate separate skilled nursing facilities at all,
12 but are alleged to be a “parent” company or a “management” company in relation to Pioneer
13 House. (*See e.g.*, SAC ¶ 19 (“Defendant Retirement Housing Foundation is [Pioneer House’s]
14 parent organization), ¶ 38 (“RHF Management is the management company that manages Pioneer
15 House”); *see also* TAC ¶¶ 30, 40 (alleging same).) The Court’s June 27, 2018 order found sufficient
16 allegations in the Second Amended Complaint for CLTCOA’s associational standing for
17 declaratory relief against *all Defendants*. Thus, Pioneer House’s pointing to paragraph 13 in the
18 Second Amended Complaint provides no support to its argument.

19 Finally, the Court questioned Defendants regarding what allegations in the Second
20 Amended Complaint, based upon the June 27, 2018 order, Defendants believed served as the
21 “injury in fact” allegations and thereby, the basis for associational standing against the Defendants
22 *other than Pioneer House*. In response, Defendants referenced CLTCOA’s allegation that all
23 Defendants were engaged in the practice of “dumping” residents into hospitals. (*See* SAC ¶ 1; TAC
24 ¶ 1.) If Defendants were correct that this constitutes an “injury in fact” allegation that was integral
25 to the June 27, 2018 order, Pioneer House has already been adjudicated to be liable under Health
26 and Safety Code section 1430(b) due to its improper refusal to readmit and improper discharge of a
27 resident (Ms. Single). (UMF 1.) Defendants also added that it appears that the Court’s analysis in
28 the June 27, 2018 order relied upon CLTCOA’s alter ego allegations to find associational standing

1 as to Defendants other than Pioneer House. If Defendants were correct that these allegations were
2 integral to the June 27, 2018 order, this is yet another indication that the June 27, 2018 order does
3 not rely upon allegations of an injury in fact to establish CLTCOA's associational standing under
4 California law to seek declaratory relief. Indeed, alter ego liability is not premised upon the alter
5 ego defendant causing the underlying injury in fact to the plaintiff. The two general requirements
6 for imposing alter ego liability are "(1) that there be such unity of interest and ownership that the
7 separate personalities of the corporation and the individual no longer exist and (2) that, if the acts
8 are treated as those of the corporation [as opposed to the individual] alone, an inequitable result
9 will follow." (Mesler v. Bragg Management Co. (1985) 39 Cal.3d 290,300 (brackets added).)

10 Thus, the Court finds Defendants' oral argument to be unpersuasive. The Court affirms the
11 tentative ruling.

12 **Conclusion**

13 Plaintiff California Long-Term Care Ombudsman Association's motion for summary
14 adjudication of its third cause of action for declaratory relief alleged in the Third Amended
15 Complaint is **GRANTED** as to Defendant Cathedral Pioneer Church Homes II and is **DENIED** as
16 to all other Defendants. The Court's ruling shall be incorporated into the final judgment of this
17 matter when the final judgment is prepared.

18 A copy of the Minute Order is attached as **Exhibit A**.

19 **IT IS SO ORDERED.**

20
21 Dated: ~~APR 19 2022~~ 2022 



Hon. Richard K. Sueyoshi 
Sacramento Superior Court Judge
Timothy W. Salter

SIGNATURE PURSUANT
TO CCP 635

28

EXHIBIT A

**CASE TITLE: SINGLE v. CONGREGATIONAL CHURCH RETIREMENT COMMUNITY
PROCEEDINGS: MOTION FOR SUMMARY JUDGMENT AND/OR ADJUDICATION**

facilities. (*Id.*) CLTCOA alleges that among other tasks, CLTCOA and its member Ombudsman Programs have worked regularly to combat unfair and illegal practices related to illegal evictions. (TAC, ¶ 13.)

The TAC alleges that Defendants "dumped" Ms. Single into Sutter Medical Center on March 23, 2017, and refused to readmit her to Pioneer House once the hospital cleared her to return home. (TAC, ¶¶ 6, 51, 52.) Plaintiffs allege that "Defendants circumvented the legal process for evicting nursing home residents, which would have accorded Ms. Single numerous substantive and procedural rights, including the right to remain at home while she challenged any decision to discharge her, and the right to have an ombudsman from CLTCOA advocate for her and help explain her rights and choices." (*Id.*, ¶ 53.)

The TAC alleges that Ms. Single invoked her right to a hearing before the Department of Health Care Services ("DHCS") on May 17, 2017. (TAC, ¶ 54.) The hearing was conducted on May 24, 2017, after which DHCS issued an order including, *inter alia*, that "Pioneer House must immediately readmit Gloria Single to the first available bed." (*Id.*, ¶ 56.) Pioneer House had not readmitted Ms. Single and she had eventually agreed to placement at a different nursing facility. (*Id.*, ¶ 57.) She still wished to return to Pioneer House to be reunited with her husband and so her son may visit her more easily. (*Id.*, ¶ 60.)

Originally, CLTCOA joined Ms. Single in alleging three causes of action: (1) first cause of action for violation of Health and Safety Code section 1430(b); (2) second cause of action for violation of Business and Professions Code sections 17200, *et seq.*; and (3) third cause of action for declaratory relief. Over a series of pleading challenges, the Court sustained without leave to amend Defendants' demurrers to CLTCOA's first and second causes of action. (ROA 230, 317.) Thus, CLTCOA currently maintains only the third cause of action for declaratory relief. In addition to Defendant Pioneer House, the other Defendants are named as Congregational Church Retirement Community, Bixby Knolls Towers, Inc., Gold Country Health Center, Mayflower Gardens Health Facilities, Inc., Stockton Congregational Homes, Inc., Foundation Property Management, Inc., RHF Management, Inc., and RHF Foundation.

Incorporating all allegations of the Third Amended Complaint, CLTCOA alleges its cause of action for declaratory relief as follows: "Through the facts alleged above, an actual and justiciable controversy exists between the parties. Defendants contend that they were allowed to discharge Mr. Single without following the statutory procedures for effecting a discharge, that they did not have to honor Ms. Single's bedhold right because they asserted that she was dangerous and that they were not required to follow the lawful order issued by DHCS requiring them to readmit Ms. Single. Ms. Single contends that a facility may never discharge a resident without following all of the statutorily required discharge procedures, that a facility never has any ground for refusing to honor a resident's bedhold right, and that failure to follow a lawful readmission order by DHCS violates a resident's rights. An actual controversy exists as to at least each of these issues and as to whether Defendants violated Ms. Single's other rights as identified above. . . . A determination by this Court will be useful in resolving the rights and obligations of the parties." (TAC, ¶¶ 93-94.)

CLTCOA now moves for summary adjudication against all Defendants on its sole remaining claim for declaratory relief on the grounds that there is no triable issue of material fact.

Legal Standard

The Court must grant a motion for summary judgment if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc. § 437c(c); *Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 35.) Section 437c(c) imposes an affirmative duty on a Court to grant summary judgment motion in an appropriate case. (*Preach v. Moister Rainbow* (1993) 12 Cal. App. 4th 1441, 1450.) The Court must decide if a triable issue of fact exists; if none does, and the sole remaining issue is one of law, the Court has a duty to determine it. (*Pittelman v. Pearce* (1992) 6 Cal. App. 4th 1436, 1441; see also *Seibert Sec. Servs., Inc. v. Superior Court* (1993) 18 Cal. App. 4th 394, 404.)

In evaluating a motion for summary judgment or summary adjudication, the court engages in a three step process. The Court first identifies the issues framed by the pleadings. The pleadings define the scope of the issues on a motion for summary judgment or summary adjudication. (*FPI Dev. Inc. v. Nakashima* (1991) 23 Cal. App. 3d 367, 381-382.) Because a motion for summary judgment or summary adjudication is limited to the issues raised by the pleadings (*Lewis v. Chevron* (2004) 119 Cal. App. 4th 690, 694), all evidence submitted in support of or in opposition to the motion must be addressed to the claims and defenses raised in the pleadings. An issue that is "within the general area of issues framed by the pleadings" is properly before the court on a summary judgment or summary adjudication motion. (*Lennar Northeast Partners v. Buice* (1996) 49 Cal. App. 4th 1576, 1582-1583.) The Court cannot consider an unpleaded issue in ruling on motion for summary judgment or adjudication. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 541.) The papers filed in response to a party's motion for summary judgment may not create issues outside the pleadings and are not a substitute for an amendment to the pleadings. (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.)

Second, the Court is required to determine whether the moving party has met its burden. Where a plaintiff seeks summary judgment (or adjudication), the burden is to produce admissible evidence on each element of a "cause of action" entitling him or her to judgment. (CCP § 437c(p)(1); see *Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1287.) Plaintiffs who bear the burden of proof at trial by a preponderance of evidence must, on summary judgment, produce evidence that would *require* a reasonable trier of fact to find any underlying material fact more likely than not. "[O]therwise, he would not be entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851.) The burden is on plaintiff to persuade the court that there is no triable issue of material fact. (*LLP Mortg. V. Bizar* (2005) 126 Cal.App.4th 773, 776.)

Finally, once the moving party has met its burden, the burden shifts to the opposing party to show that a material factual issue exists as to the cause of action alleged or a defense to it. (CCP § 437c(p); see generally *Bush v. Parents Without Partners* (1993) 17 Cal. App. 4th 322, 326-327.) "There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra*, 25 Cal.4th at p. 845.) In ruling on the motion, the court must consider the evidence and inferences reasonably drawn from the evidence in the light most favorable to the party opposing the motion. (*Id.*, at p. 843.)

Defendants' Evidentiary Objections

Defendants make a series of objections to various identified portions of the Declaration of Leza Coleman, submitted by CLTCOA in support of its Statement of Undisputed Material Facts. Defendants assert that portions of the Coleman declaration are objectionable as "irrelevant," "speculation," "lacks foundation," "lacks personal knowledge," "prejudicial because the statement is materially misleading," "incomplete," "improper lay witness opinion testimony," and "hearsay." The Court has reviewed each of Defendants' objections and CLTCOA's responses thereto. Defendants' objections to the Coleman declaration are **OVERRULED**.

Discussion

CLTCOA seeks a declaration regarding the parties' respective rights and obligations under state and federal law governing the transfer and discharge of residents in skilled nursing facilities. Specifically, CLTCOA requests declaratory relief of the following:

- (1) A facility's refusal to accept a resident back from the hospital after the hospital clears the resident for return to the facility constitutes an involuntary transfer under state and federal law.
- (2) A facility's refusal to readmit a resident under these circumstances triggers the facility's obligation to comply with the five "transfer and discharge" requirements listed in 42 C.F.R. § 483.15.
- (3) The involvement of a third party in a resident's admission to the hospital does not exempt the facility from complying with the transfer and discharge requirements of 42 C.F.R. § 483.15.
- (4) Once a hospital clears a resident to return to the facility, the facility may not refuse to accept the resident on the grounds that the facility cannot properly care for the resident, or that the facility is still gathering information to assess the resident's current condition. (MPA, 7-8):

In support of its motion, CLTCOA puts forth three Undisputed Material Facts (UMFs): On July 19, 2021, the Court (Judge Shama Mesiwala) issued its Order Granting in Part Plaintiff Gloria Single's Motion for Summary Adjudication, finding Defendant Pioneer House liable for violating California Health and Safety Code § 1430(b). (UMF 1.) CLTCOA's members are Local Ombudsmen and their staff. (UMF 2.) CLTCOA's purpose is to act as a unified voice on behalf of Local Ombudsmen and assist them in carrying out their statutory duties to protect residents' rights and access to services. (UMF 3.)

Defendants do not dispute UMF No. 1 as to Defendant Pioneer House. However, Defendants dispute UMF No. 1 "in all other respects" arguing that "this fact does not create a justiciable controversy between CLTCOA and any *other* Defendant" and that these facts are "not material to whether CLTCOA possesses associational standing to maintain a declaratory relief action against Defendants or whether an actual controversy exists between any CLTCOA member and any Defendant." (ROA 896, Defendants Responsive Separate Statement ("RS"), 2.)

Defendants do not dispute UMF No. 2. (RS, 2.)

Defendants dispute UMF No. 3 and argue that "this fact does not create a justiciable controversy between CLTCOA and any other Defendant" and that "this fact is not material to whether CLTCOA possesses

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associational standing to maintain a declaratory relief action against Defendants or whether an actual controversy exists between any CLTCOA member and any Defendant.” (RS, 3.)

The Court finds that there are no genuine issues of material fact with respect to UMF Nos. 1 through 3. Defendants’ stated “dispute” in relation to UMF Nos. 1 and 3 are not disputes of the facts themselves. That is, Defendants do not dispute the truth of UMF Nos. 1 or 3. Rather, Defendants’ stated “dispute” is regarding the materiality and legal significance of these otherwise undisputed facts. While such “disputes” are matters for argument, they do not affect the undisputed nature of UMF Nos. 1 and 3.

CLTCOA’s Associational Standing

As a preliminary matter, the Court notes that CLTCOA argues there is no triable issue bearing on CLTCOA’s associational standing to pursue declaratory relief. (MPA, 12-17.) CLTCOA argues this point in its moving papers given that Defendants have asserted that CLTCOA lacks standing throughout this litigation.

Defendants’ opposition brief mentions “associational standing” four times. (Opp., 2:14; 3:13-14; 10:3.) In their opposition, Defendants’ do not specifically address the three-part legal test for associational standing under California law. Defendants’ first reference to “associational standing” is merely an argument that CLTCOA bears the burden of proving it. (Opp., 2:13-14.) Defendants’ second reference to “associational standing” summarily states, “[n]ow that the time has come for CLTCOA to present actual evidence of its associational standing allegations and claims of an ‘actual controversy’ between the parties, it has demonstrated it cannot do so.” (Opp., 3:13-15.) Defendants’ last two references to “associational standing” are on the final page of their opposition where Defendants argue that “[i]n the context of associational standing, the ‘irreducible constitutional minimum’ requires a plaintiff to allege a particularized injury” (Opp., 10:3-4.) Defendants then state that CLTCOA has failed to show “the requisite injury sufficient to have standing in its own right pursuant to the three part associational standing test established in *Hunt v. Wash. State Apple Adver. Comm’n* (1977) 432 U.S. 333.” (Opp., 10:11-14.)

Because CLTCOA’s associational standing is a threshold issue, the Court shall address it first.

Importantly for this case and this motion, this is not the first time the Court has addressed the question of CLTCOA’s associational standing to maintain its cause of action for declaratory relief. On June 27, 2018, the Court (Judge Steven Rodda) overruled Defendants’ demurrer to CLTCOA’s third cause of action for declaratory relief in Plaintiffs’ then Second Amended Complaint. (ROA 230.) Defendants’ challenge was that CLTCOA was not a proper party to the Second Amended Complaint because it lacked standing. The Court sustained Defendants’ demurrer to CLTCOA’s first and second causes of action. However, the Court overruled Defendants’ demurrer to CLTCOA’s third cause of action for declaratory relief on the specific ground that taking CLTCOA’s factual allegations as true and given the law applicable to its Local Ombudsmen members, CLTCOA’s Second Amended Complaint satisfied the elements of associational standing under California law.

Specifically, in its June 27, 2018 order, the Court held as follows:

Associations like CLTCOA possess legal standing in certain cases. “Associational standing exists when: (a) the association’s members would otherwise have standing to sue in their own right; (b)

the interests the association seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court [Amalgamated]* (2009) 46 Cal.4th 993, 1004, brackets omitted.)

The SAC sets up controversies over whether Defendants may discharge patients without following statutory procedures and whether Defendants may "refuse to honor a resident's bedhold right[.]" (SAC, ¶ 91.) Notwithstanding Defendants' arguments to the contrary, the allegations can be construed to establish CLTCOA's associational standing. The interests CLTCOA seeks to protect are germane to its purpose. Furthermore there does not appear to be any need for Local Ombudsmen programs to participate in the action for declaratory relief.

With respect to the third element of associational standing, i.e., that CLTCOA's members would otherwise have standing to sue in their own right, the court is mindful that Local Long-Term Care Ombudsmen and the programs they operate are a creation of federal law in the first instance. Subdivision (a)(5) of 42 U.S.C. § 3058g empowers State Ombudsmen to designate Local Ombudsmen to perform the following functions:

- (i) provide services to protect the health, safety, welfare[,] and rights of residents;
- (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
- (iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;
- (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

[¶¶]

- (vii) identify, investigate, and resolve complaints described in clause (iii) that are made by or on behalf of residents with limited or no decisionmaking capacity and who have no known legal representative, and if such a resident is unable to communicate consent for an Ombudsman to work on a complaint directly involving the resident, the Ombudsman shall seek evidence to indicate what outcome the resident would have communicated (and, in the absence of evidence to the contrary, shall assume that the resident wishes to have the resident's health, safety, welfare, and rights protected) and shall work to accomplish that outcome[...¶.]

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The court is not persuaded that these responsibilities do not provide CLTCOA's members with a legal interest sufficient to support a declaratory relief cause of action. Hence, the demurrer is overruled.

(ROA 230, 3-6)

The allegations contained in the Second Amended Complaint that established CLTCOA's associational standing for proposes of overruling Defendants' demurrer remain essentially unchanged, and are even expanded, in the Third Amended Complaint. (TAC, ¶¶ 11-15.) Now, CLTCOA moves for summary adjudication on the same declaratory relief cause action, this time relying upon UMF Nos. 1 through 3. Again, this includes the material fact that "CLTCOA's purpose is to act as a unified voice on behalf of Local Ombudsmen and *assist them in carrying out their statutory duties to protect residents' rights and access to services.*" (UMF 3 (emphasis added).) To support its undisputed material facts, CLTCOA provides the declaration of its Executive Director, Leza Coleman. As to the functions performed by Local Ombudsman, they continue to exist as a matter of law as recited by the Court in ruling on Defendants' demurrer.

In examining each element of associational standing under California law, the Court finds that CLTCOA has established with undisputed material facts its associational standing to allege its declaratory relief cause of action as to Defendant Pioneer House. As to the other Defendants, the Court addresses CLTCOA's claim in the latter section of this ruling regarding the elements of declaratory relief.

1. The association's members would otherwise have standing to sue in their own right.

CLTCOA argues that it is undisputed that its members are Local Long-Term Care Ombudsman Programs and their staff. (UMF 2; RS, 3.) Citing the same law referenced by the Court on demurrer, CLTCOA argues that its members would have standing to pursue the declaratory relief claim because of the responsibilities placed on Local Long-Term Care Ombudsmen pursuant to 42 U.S.C. § 3058g(a)(5). (MPA, 13.) CLTCOA contends that because an individual Local Long-Term Care Ombudsman would have standing to seek a declaration of long-term residents' rights and Defendants' corresponding obligations under federal and state law, so too does CLTCOA. (MPA, 14.)

In their opposition, Defendants do not specifically address this element in the context of discussing the three-part test for associational standing. Rather, Defendants provide a series of arguments why they believe CLTCOA has not established an "actual controversy" as an element of the claim for declaratory relief for either CLTCOA or its members, without separately analyzing CLTCOA's standing from that of its members. The Court considers Defendants' arguments as they pertain to CLTCOA's members.

First, Defendants argue that the Coleman declaration is speculative, irrelevant and conclusory such that it cannot provide any basis to establish and "ongoing relationship" or an "ongoing dispute" so as to establish an "actual controversy." As indicated above, the Court has overruled Defendants' objections to the Coleman declaration.

Next, Defendants argue that to the extent the Coleman declaration is intended to support the finding of an "actual controversy," her declaration is contradicted by her deposition testimony. (Opp., 6.) Here, Defendants point to a series of questions asked to Coleman where Defendants' counsel asked, "*other than this case,*" if

Coleman was aware “of defendant’s refusal to accept residents back from the hospital after the hospital cleared the resident to return to the facility,” “of defendant’s failure to comply with the transfer and discharge requirements,” or where a “third party removed the resident from the facility,” etc. (*Id.*) Coleman responded that “other than this case,” she was not aware of other cases; and that she did know of allegations and complaints of the nature referenced by Defendants’ counsel, but that she did not know of specific complaints regarding the named defendants. (*Id.*) Defendants add that Coleman confirmed the local ombudsman member of the region associated with Pioneer House “had no record of an ombudsman conducting a complaint investigation with Ms. Single.” (*Id.*) Defendants appear to argue that the absence of these facts demonstrates that CLTCOA (and its members) cannot prove an “actual controversy” and thereby, cannot maintain its cause of action for declaratory relief.

The Court finds this argument to be unpersuasive. As discussed above, the Court ruled in its June 27, 2018 order that the allegations of CLTCOA’s Second Amended Complaint, combined with the law setting forth the responsibilities of Local Ombudsmen, were sufficient for CLTCOA to maintain its cause of action for declaratory relief. The Second Amended Complaint did not include factual allegations that provided affirmative answers to the questions that Defendants asked of Coleman in her deposition. Yet, the Court overruled Defendants’ demurrer. Like its Second Amended Complaint, CLTCOA’s now-operative Third Amended Complaint also does not include such allegations. As evident from the Court’s prior ruling on demurrer, the allegations that Defendants contended were required to establish standing - and now contend must be proved - have already been determined by the Court to be unnecessary. Indeed, if the allegations were necessary to survive a demurrer specifically challenging CLTCOA’s standing (and now necessary to prove the claim on summary adjudication), Defendants would have succeeded on their demurrer to CLTCOA’s declaratory relief cause of action. They did not. Thus, Defendants’ raising of this argument effectively re-argues an issue already ruled upon by the Court.

Defendants also argue that CLTCOA must show that it has “suffered injury in fact, that the injury is fairly traceable to the defendant, and that the injury will likely be redressed by a favorable decision” pursuant to *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560-561; and *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.* (1982) 454 U.S. 464, 471-472. (Opp., 10.) They argue that because this is not established, then no CLTCOA member can show the requisite injury to have standing in its own right pursuant to the 3-part associational standing test. (*Id.*)

Among other points, CLTCOA replies that it is not required to show an “injury-in-fact” in order to seek declaratory relief in a California court under California law and that Defendants are relying on Article III standing requirements that do not apply in this instance. (*Id.*)

Similar to Defendants’ arguments regarding the Coleman deposition, Defendants’ argument that CLTCOA members cannot have standing without (alleging and) proving an “injury in fact,” was dispensed with by the Court’s overruling of Defendants’ demurrer challenging CLTCOA’s allegations of associational standing. No allegations of an “injury in fact” were required then to establish CLTCOA’s associational standing. And thus, no such proof is required now to establish the same.

As to the ultimate question presented by this factor of the associational standing analysis, the Court finds that CLTCOA has established with undisputed material facts that its members would otherwise have standing to sue

in their own right as to Defendant Pioneer House. Again, UMF No. 1 references this Court’s order issued on July 19, 2021, granting Ms. Single’s motion for summary adjudication finding Defendant Pioneer House liable for violating California Health and Safety code § 1430(b). The Court’s July 19, 2021 order establishes that Pioneer House is a skilled nursing facility as defined in subdivision (c) of Health and Safety Code section 1250, and that Pioneer House is liable under Health and Safety Code section 1430(b) in connection with its improper refusal to readmit and improper discharge of a resident (Ms. Single). These facts are undisputed as to Defendant Pioneer House. (RS, 2.) UMF No. 2 states that “CLTCOA’s members are Local Ombudsmen and their staff” and cites to paragraph 3 of Coleman’s declaration. This fact is also undisputed. (RS, 3) Similarly undisputed are the provisions of 42 U.S.C. § 3058(g)(a)(5) which set forth the duties and responsibilities of Local Ombudsmen as indicated above.

Considering the undisputed material facts and the applicable law, the Court finds that CLTCOA’s members would otherwise have standing to sue in their own right for declaratory relief as to Defendant Pioneer House. Consistent with the Court’s June 27, 2018 order, the Court finds that a CLTCOA member would not have to prove additional facts beyond those set forth in the Third Amended Complaint (and which have now been established by the undisputed material facts) to have standing to sue in their own right for declaratory relief as to Defendant Pioneer House.

2. The interests the association seeks to protect are germane to the organization's purpose.

CLTCOA argues that UMF No. 3 establishes that the declaration it seeks is germane to its purpose “to act as a unified voice on behalf of Local Ombudsmen and assist them in carrying out their statutory duties to protect residents’ rights and access to services.” (UMF 3.)

Defendants do not address this specific element in their opposition brief. At most, Defendants dispute UMF No. 3 in their Response to Separate Statement, conclusively asserting that “this fact is not material to whether CLTCOA possess associational standing.” (RS, 3.) Defendants proceed to cite to Coleman’s deposition testimony on other topics. (*Id.*)

Based upon the undisputed material facts, the Court finds that the interests that CLTCOA seeks to protect by way of its cause of action for declaratory relief against Defendant Pioneer House are germane to CLTCOA’s purpose.

3. Neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

CLTCOA argues this requirement is met where the association can "establish [its] claims without individualized factual inquiries related to each [member]" (*United Farmers Agents Assn., Inc. v. Farmers Group, Inc.* (2019) 32 Cal.App.5th 478, 491; MPA, 16.) It contends this is met because CLTCOA seeks a pure declaration of law regarding “the correct interpretation of statutes and regulations creating long-term facility ‘transfer and discharge’ requirements, and the parties’ respective rights and obligations thereunder” and such a determination will not require any individualized factual inquiries related to each Local Ombudsman member. (MPA, 16.)

Defendants do not address this element in their opposition brief.

The Court finds that neither the declaratory relief claim nor the relief requested therein requires the participation of CLTCOA's individual members in this action.

Therefore, the Court finds that in bringing its cause of action for declaratory relief as to Defendant Pioneer House, CLTCOA has proved with undisputed material facts, the three elements of associational standing under California law.

CLTCOA's Cause of Action for Declaratory Relief against all Defendants

A cause of action for declaratory relief has two elements: "(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party." (*Brownfield v. Daniel Freeman Marina Hosp.* (1989) 208 Cal.App.3d 405, 410.)

1. Proper Subject of Declaratory Relief

CLTCOA argues that its claim is a proper subject of declaratory relief because it presents a pure question of law as to the parties' respective rights and obligations under state and federal law governing the transfer and discharge of residents in skilled nursing facilities. (MPA, 6-9.) Defendants' opposition does not directly address this element or otherwise indicate that the determination of the parties' respective rights and obligations under law is not and/or cannot be a *proper subject* for declaratory relief.

The Court finds that the matter presented by CLTCOA's declaratory relief cause of action is a proper subject of declaratory relief. In general, "[a] controversy over an interpretation of statute, and the duties that statute imposes, is a proper basis for a declaratory relief claim." (*Redwood Coast Watersheds Alliance v. State Bd. Of Forestry & Fire Prot.* (1999) 70 Cal.App.4th 962, 969.) Similarly, "[d]eclaratory relief is appropriate to obtain judicial clarification of the parties' rights and obligations under applicable law." (*Californians for Native Salmon Ass'n v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1427.) Here, the declarations sought by CLTCOA's declaratory relief cause of action and its motion are declarations of Defendants' obligations under applicable law. (MPA, 7-8.) Therefore, the subject of CLTCOA's claim is a proper subject of declaratory relief.

2. Actual Controversy

Declaratory relief is permitted "in cases of actual controversy relating to the legal rights and duties of the respective parties." Code Civ. Proc. § 1060; see also Code Civ. Proc. § 1061 [providing that the Court may decline to exercise its power where declaratory relief "is not necessary or proper at the time under all the circumstances."] "Whether a claim presents an 'actual controversy' within the meaning of [CCP] section 1060 is a question of law...." (*Environ'l Defense Proj. of Sierra County v. County of Sierra* (2008) 159 Cal.App.4th 877, 885.) In *Gafcon, Inc. v. Posner & Associates*, the Court recognized that "declaratory relief 'operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasions of rights or commissions of wrongs; in short, the remedy is to be used in the interests of preventative justice, to declare rights rather than execute them.'" (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1403, citations omitted; see also *Babb v. Superior Court* (1971) 3

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Cal.3d 841, 848 [same]; *Conova v. Trustees of Imp'l Irrig. Dist. Emp'ee Pen. Plan* (2007) 150 Cal.App.4th 1487, 1497 [same].)

CLTCOA argues that its claim presents an “actual controversy” because the parties have an ongoing relationship and an ongoing dispute over their respective rights and obligations. (MPA, 9-11.) Citing its UMF Nos. 2 and 3, CLTCOA argues that “both parties are repeat players under relevant state and federal laws governing the transfer and discharge of skilled nursing facility residents. Defendants manage and operate long-term care facilities, while CLTCOA’s members are required by federal and state law to protect the rights and interests of residents in Defendants’ long-term care facilities.” (MPA, 10.)

At the outset, the Court finds that CLTCOA has failed to present, in the context of this motion, undisputed material facts proving an “actual controversy” between CLTCOA on the one hand, and the Defendants *other than Pioneer House* - namely, Defendants Congregational Church Retirement Community, Bixby Knolls Towers, Inc., Gold Country Health Center, Mayflower Gardens Health Facilities, Inc., Stockton Congregational Homes, Inc., Foundation Property Management, Inc., RHF Management, Inc., and RHF Foundation, on the other hand. As discussed above, CLTCOA offers three undisputed material facts. CLTCOA’s UMF Nos. 2 and 3 are focused on CLTCOA itself and do not mention any Defendants. Nor does the declaration of Leza Coleman, which is the evidentiary foundation of UMF Nos. 2 and 3. The remaining UMF No. 1, states that “[o]n July 19, 2021, the Court issued its Order Granting in Part Plaintiff Gloria Single’s Motion for Summary Adjudication finding Defendant Pioneer House liable for violating California Health and Safety Code section 1430(b).” Defendants do not dispute UMF No. 1 as to Defendant Pioneer House. (RS, 2.) However, UMF No. 1 does not mention any Defendants other than Pioneer House.

While the absence of undisputed material facts related to the other Defendants is enough to defeat CLTCOA’s motion as to those Defendants, the evidentiary basis on which CLTCOA relies for its UMFs also provides no support to its motion in this regard. The evidentiary basis for UMF No. 1 is the Court’s July 19, 2021 order. (Borden Decl., Ex. A) As CLTCOA correctly states in UMF No. 1, the order finds that Ms. Single is entitled to judgment as a matter of law against *Defendant Pioneer House* for violation of Health and Safety Code section 1430(b). That order relies upon Ms. Single’s three undisputed material facts, all of which relate to *Defendant Pioneer House* and its actions. (Borden Decl., Ex. A at 22.) The third undisputed material fact states that “*Defendants* did not seek a writ of mandate to try to overturn DHCS’s Order finding that Pioneer house illegally discharged Ms. Single by leaving her in a hospital.” (*Id.*) While the reference to “Defendants” is in plural, the undisputed material fact does not provide any information regarding who the referenced Defendants are, what they do, and what their relationship is to CLTCOA. While the DHCS order served as an evidentiary basis for Ms. Single’s first and second undisputed material facts (Borden Decl., Ex. A at 22), even if it had been a basis for CLTCOA’s motion here, and could be considered, the DHCS order, notably, does not mention the Defendants other than Pioneer House.

From its supporting memorandum of points and authorities, it appears that CLTCOA relies on two documents to provide evidence regarding the involvement of the Defendants other than Pioneer House. (MPA, 3:26.) One document is a prior motion for summary judgment/adjudication filed by Defendants. (ROA 348.) The other is the Court’s (Judge David Brown) January 23, 2020 ruling on that motion. (ROA 541.) This Court finds that such reference in CLTCOA’s memorandum of points and authorities is insufficient for the purposes of establishing with clarity the offered undisputed material facts upon which CLTCOA seeks summary

adjudication against such Defendants. CLTCOA is required to present what it believes to be the specific undisputed material facts supporting its motion so that such matters can be responded to and properly vetted. In contrast, CLTCOA found it proper to state UMF No. 1 specific to Defendant Pioneer House and to supply as evidence in support of UMF No. 1, the Court's July 19, 2021 order, which made specific findings as to Pioneer House. Yet CLTCOA did not do the same for other Defendants. In any event, even if CLTCOA had asserted undisputed material facts as to the other Defendants and supplied the Court's January 23, 2020 order in support thereof, the Court notes that the recitations therein regarding each entity's connection to this dispute are not the same as that of Defendant Pioneer House, nor are the facts relating to each Defendant the same among them. Thus, the analysis as to the other Defendants might not be the same as the analysis for Pioneer House. This only further highlights the necessity that CLTCOA present exactly what undisputed material facts it asserts as to each Defendant other than Pioneer House and why CLTCOA has an "ongoing relationship" and "ongoing dispute" with each Defendant so as to constitute an "actual controversy."

In sum, because CLTCOA has not provided any undisputed material facts describing the Defendants other than Pioneer House, for purposes of this motion, CLTCOA has not established an ongoing relationship as a predicate to an "actual controversy" with those Defendants. Therefore, the Court DENIES the motion for summary adjudication as to Defendants Congregational Church Retirement Community, Bixby Knolls Towers, Inc., Gold Country Health Center, Mayflower Gardens Health Facilities, Inc., Stockton Congregational Homes, Inc., Foundation Property Management, Inc., RHF Management, Inc., and RHF Foundation.

The Court next returns to CLTCOA's motion as directed to Defendant Pioneer House. As indicated above, the Court has found that CLTCOA's members would have standing to sue in their own right for declaratory relief as to Defendant Pioneer House. The Court has also found that CLTCOA has established associational standing to bring its declaratory relief claim against Defendant Pioneer House. The Court addresses here Defendants' remaining arguments regarding CLTCOA's establishment of an "actual controversy."

Defendants argue because Pioneer House had no record of a controversy with any other party other than Ms. Single, that there is no "actual controversy" between any of CLTCOA's members and any Defendant. (Opp., 5.) The Court rejects this argument. The nature and purpose of declaratory relief Code of Civil Procedure § 1060 authorizes a court to grant declaratory relief which is an equitable remedy that exists "to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs." (*Environ'l Defense Proj.*, *supra*, 158 Cal.App.4th at p. 884 (citation omitted).) "It is to be used in the interests of preventive justice, to declare rights rather than execute them." (*Id.*) Under California law, "[a]ny person ... who desires a declaration of his or her rights or duties with respect to another ... may ask for a declaration ... and the court may make a binding declaration of these rights or duties." (Code Civ. Proc. § 1060.)

Defendants argue that CLTCOA's assertion that "Defendants manage and operate long-term care facilities that are regulated by state and federal law, and CLTCOA's members are required by state and federal law to protect the rights of residents in Defendants' long-term care facilities" is insufficient to establish that CLTCOA has an "ongoing dispute" with Pioneer House, or any other facility defendant, regarding the interpretation and/or enforcement of any of specific resident's rights regarding discharges or transfers. (Opp., 7-8.)

CLTCOA analogizes the instant matter to *Environ'l Defense Proj.*, *supra*, which determined an actual controversy remained between the parties because they continued to disagree in their interpretations of the

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Government Code even after the environmental group plaintiff had already resolved its specific dispute with the county over an individual landowner's zoning request. (158 Cal.App.4th at p. 886.) CLTCOA argues an "actual controversy" and "ongoing dispute" remain here because the parties disagree over the interpretation of a facility's obligations under 42 C.F.R. § 483.15. (MPA, 10-11; Reply, 3-4.)

The Court agrees with CLTCOA insofar as it has established a basis for declaratory relief as to Defendant Pioneer House.

Defendants dispute that the UMFs show the existence of an "ongoing relationship" between CLTCOA and any Defendant or identify an instance where any act by a Defendant thwarted or otherwise encumbered CLTCOA's purpose. (Opp., 7)

As explained earlier, the Court agrees insofar as finding that CLTCOA has not established summary adjudication as to the Defendants other than Pioneer House. The Court disagrees with Defendants' argument in relation to Pioneer house.

Again, UMF No. 3 states: "CLTCOA's purpose is to act as a unified voice on behalf of Local Ombudsmen and assist them in carrying out their statutory duties to protect residents' rights and access to services." In support, CLTCOA cites to paragraphs 5-7 of Coleman's declaration. Those paragraphs state as follows:

5. CLTCOA's purpose is to provide a unified voice in advocacy to the Local Ombudsman Programs and assist them in carrying out their duties to protect elderly residents' rights and access to services. CLTCOA's assistance to Local Ombudsmen comes in many forms. CLTCOA appears on behalf of the Local Ombudsmen in commenting on, supporting, or opposing legislation that impacts long-term care residents, and files amicus curiae briefs on issues that affect all Local Long-Term Care Ombudsmen.

6. CLTCOA helps conserve the resources of and lessen the burdens on each individual Local Ombudsmen Program by undertaking tasks and projects common to all Programs, thereby reducing or eliminating the need for each Program's participation and/or the duplication of similar work and efforts across Programs. For example, CLTCOA recently secured funding to create an online certification training, available for Local Ombudsman Programs to use to certify their staff and volunteers. This standardized process will help reduce the time and resources that each Local Program would otherwise need to expend to train and certify its staff members.

7. As noted on the Government's website, one of the issues that Local Long-Term Care Ombudsmen help residents and their families with is "Improper transfer or discharge of a resident." One of the reasons that CLTCOA decided to bring this case is that resident dumping is an unlawful practice that injures all our members. When a Local Long-Term Care Ombudsman receives a complaint about an illegal discharge, they have to investigate the claim, advise the resident about their rights, and try to persuade the facility to follow the law. These efforts drain the already limited resources that Local Long-Term Care Ombudsmen have. All too often, facilities refuse to follow the law anyway. (Coleman Decl. ¶¶ 5-7.)

Thus, CLTCOA’s purpose includes assisting Local Ombudsmen in “carrying out their statutory duties to protect residents’ rights and access to services.” As discussed above, Defendants do not dispute that this is CLTCOA’s purpose, but rather, dispute its legal significance and materiality to the issues in this motion. The Court has found this fact to be undisputed. The Court’s July 19, 2021 order establishes that Pioneer House is a skilled nursing facility as defined in subdivision (c) of Health and Safety Code section 1250, and that Pioneer House is liable under Health and Safety Code section 1430(b) in connection with its improper refusal to readmit and improper discharge of a resident. For the reasons previously discussed, the Court finds that CLTCOA has established with undisputed facts an “actual controversy” with Defendant Pioneer House.

3. Declarations Sought by CLTCOA.

As referenced earlier, CLTCOA seeks a declaration regarding the parties’ respective rights and obligations under state and federal law governing the transfer and discharge of residents in skilled nursing facilities. Specifically, CLTCOA requests declaratory relief of the following:

- (1) A facility’s refusal to accept a resident back from the hospital after the hospital clears the resident for return to the facility constitutes an involuntary transfer under state and federal law.
- (2) A facility’s refusal to readmit a resident under these circumstances triggers the facility’s obligation to comply with the five “transfer and discharge” requirements listed in 42 C.F.R. § 483.15.
- (3) The involvement of a third party in a resident’s admission to the hospital does not exempt the facility from complying with the transfer and discharge requirements of 42 C.F.R. § 483.15.
- (4) Once a hospital clears a resident to return to the facility, the facility may not refuse to accept the resident on the grounds that the facility cannot properly care for the resident, or that the facility is still gathering information to assess the resident’s current condition. (MPA, 7-8):

Defendants do not contest the language of the declarations sought by CLTCOA. The Court finds that the declarations sought are within the scope of CLTCOA’s allegations and the general issues framed by the Third Amended Complaint.

The Court does not rule on CLTCOA’s evidentiary objections filed in support of their reply as they are immaterial to the Court’s adjudication of the motion pursuant to CCP § 437c(q).

Conclusion

Plaintiff California Long-Term Care Ombudsman Association’s motion for summary adjudication of its third cause of action for declaratory relief alleged in the Third Amended Complaint is GRANTED as to Defendant Cathedral Pioneer Church Homes II and is DENIED as to all other Defendants. The Court’s ruling shall be incorporated into the final judgment of this matter when the final judgment is prepared.

This minute order is effective immediately. The prevailing party is directed to prepare a formal order complying with CCP §437c(g) and CRC Rule 3.1312.

COURT RULING

The matter was argued and submitted.

The matter was taken under submission.

HAVING TAKEN THE MATTER UNDER SUBMISSION ON 2/24/22, THE COURT NOW RULES AS FOLLOWS:

The Court has considered the parties' respective oral arguments. Plaintiff CLTCOA and Defendants each requested oral argument, challenging different portions of the Court's tentative ruling. The tentative ruling is augmented as follows and otherwise affirmed.

Plaintiff CLTCOA challenged the tentative ruling's denial of its motion for summary adjudication as to the Defendants other than Pioneer House. CLTCOA argued, among other points, that it is a mere "incremental step" that the Court should take to find in CLTCOA's favor on its declaratory relief cause of action as to the Defendants other than Pioneer House. CLTCOA argues that there have been other filings through the course of this litigation, beyond the two addressed by the Court's tentative ruling, that also indicate Defendants' collective position as to the claims in this case. As the Court indicated during oral argument, the fact that there may be various filings in this litigation by Defendants asserting their position does not affect the Court's finding that CLTCOA bears the burden of proof on its motion for summary adjudication and has not satisfied its burden here as to the Defendants other than Pioneer House. Therefore, the Court affirms the tentative ruling.

Defendant Pioneer House challenged the tentative ruling's granting of CLTCOA's motion for summary adjudication. Specifically, Pioneer House argued that its position that CLTCOA must prove that its members suffered an "injury in fact" for the Court to find CLTCOA's associational standing to obtain declaratory relief was not an issue decided and thereby foreclosed by the Court's June 27, 2018 (Judge Steven Rodda) order on demurrer. Pioneer House argued that the Court's June 27, 2018 order overruling Defendants' demurrer to the CLTCOA's declaratory relief claim "left open" the necessity that CLTCOA prove an "injury in fact" in order to prove associational standing. Pioneer House argues that the Court's June 27, 2018 order requires, by implication, that CLTCOA now prove that its members suffered an "injury in fact" in order for CLTCOA to obtain summary adjudication.

The Court is not persuaded by Pioneer House's argument. As it explained in its tentative ruling, the Court finds that the June 27, 2018 order effectively settled the issue of what CLTCOA needed to allege (and thus, now must prove) in order to establish its associational standing to obtain declaratory relief against Pioneer House as well as the other Defendants. As a preliminary matter, in addressing CLTCOA's then second cause of action for violation of Business & Professions Code section 17200, et seq., the Court applied the elements of associational standing under California law and found that the allegations in the Second Amended Complaint did not establish the element that CLTCOA's Local Ombudsman members would have standing to sue in their own right. In particular, the Court stated that "it is unclear how any of its Local Ombudsmen members have suffered the economic injury to state unfair competition." Specifically referring to 42 U.S.C. § 3058(g), the Court stated, "[t]o the extent a Local Ombudsman within CLTCOA's membership expended funds assisting Single or other long term care residents, it is unclear how that assistance constitutes an injury." The Court sustained

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Defendants' demurrer to CLTCOA's second cause of action under Business and Professions Code section 17200.

In contrast, when the Court applied the same associational standing elements under California law to CLTCOA's third cause of action for declaratory relief, the Court did not require a similar allegation of an "injury in fact." At the outset, the Court cited the test for associational standing under California law and also observed the differently stated test for "organizational standing" for purpose of Article III under federal law. The Court observed that federal cases have stated that "an organization may satisfy the Article III requirement of injury in fact if it can demonstrate: (1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular housing discrimination in question." (Smith v. Pac. Props. & Dev. Corp. (9th Cir. 2004) 358 F.3d 1097, 1105.)" After observing California law on associational standing and federal authorities on "organizational standing," the Court proceeded to apply the three-element test under California law. The Court held that the Second Amended Complaint "sets up controversies over whether Defendants may discharge patients without following statutory procedures and whether Defendants may 'refuse to honor a resident's bedhold right[.]'" The June 27, 2018 order explains that the allegations of the Second Amended Complaint, coupled with the duties and responsibilities imposed on Local Ombudsmen under law, establish that CLTCOA's members would have standing to sue in their own right, thereby satisfying that element of associational standing. Thus, the Court's June 27, 2018 order addressed the issue and cannot now be construed as requiring the proof of additional allegations that did not exist in the Second Amended Complaint (and similarly do not exist in the Third Amended Complaint).

Pioneer House next argued that the Second Amended Complaint can be construed as requiring proof of the type of "injury in fact" Pioneer House claims is required because in paragraph 13, the Second Amended Complaint alleged that "CLTCOA's member organizations expend precious time actively helping residents, including Ms. Single, obtain administrative orders securing readmission to their homes after temporary hospitalization" (now appearing in paragraph 15 of the Third Amended Complaint). Pioneer House argued that because this allegation has not been established (and is also proved untrue by Pioneer House's separate evidence), CLTCOA cannot now establish associational standing. However, there is no indication in the June 27, 2018 order that this allegation constitutes an "injury in fact" and/or that it must be proved for CLTCOA to have associational standing. While the Court's analysis of second cause of action under Business & Professions Code section 17200 focused on the adequacy of allegations of an economic injury in fact, the Court's analysis of the third cause of action indicated no such similar reliance. Further, the Court's overruling of Defendants' demurrer to the third cause of action was for *all of the Defendants*, not only Pioneer House. The Second Amended Complaint included no such similar allegations as to any of the other Defendants. For example, there are no allegations that Ms. Single was a resident at any of the other facilities operated by other Defendants, much less allegations that CLTCOA expended resources to secure Ms. Single's readmission to such other facilities. Additionally, some of the other Defendants do not operate separate skilled nursing facilities at all, but are alleged to be a "parent" company or a "management" company in relation to Pioneer House. (See e.g., SAC ¶19 ("Defendant Retirement Housing Foundation is [Pioneer House's] parent organization), ¶ 38 ("RHF Management is the management company that manages Pioneer House"); see also TAC ¶¶30, 40 (alleging same).) The Court's June 27, 2018 order found sufficient allegations in the Second Amended Complaint for CLTCOA's associational standing for declaratory relief against *all Defendants*. Thus, Pioneer House's pointing to paragraph 13 in the Second Amended Complaint provides no support to its argument.

Finally, the Court questioned Defendants regarding what allegations in the Second Amended Complaint, based upon the June 27, 2018 order, Defendants believed served as the “injury in fact” allegations and thereby, the basis for associational standing against the Defendants *other than Pioneer House*. In response, Defendants referenced CLTCOA’s allegation that all Defendants were engaged in the practice of “dumping” residents into hospitals. (See SAC ¶ 1; TAC ¶ 1.) If Defendants were correct that this constitutes an “injury in fact” allegation that was integral to the June 27, 2018 order, Pioneer House has already been adjudicated to be liable under Health and Safety Code section 1430(b) due to its improper refusal to readmit and improper discharge of a resident (Ms. Single). (UMF 1.) Defendants also added that it appears that the Court’s analysis in the June 27, 2018 order relied upon CLTCOA’s alter ego allegations to find associational standing as to Defendants other than Pioneer House. If Defendants were correct that these allegations were integral to the June 27, 2018 order, this is yet another indication that the June 27, 2018 order does not rely upon allegations of an injury in fact to establish CLTCOA’s associational standing under California law to seek declaratory relief. Indeed, alter ego liability is not premised upon the alter ego defendant causing the underlying injury in fact to the plaintiff. The two general requirements for imposing alter ego liability are “(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation [as opposed to the individual] alone, an inequitable result will follow.” (Mesler v. Bragg Management Co. (1985) 39 Cal.3d 290, 300 (brackets added).)

Thus, the Court finds Defendants’ oral argument to be unpersuasive. The Court affirms the tentative ruling.

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CERTIFICATE OF SERVICE BY MAILING

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **MINUTE ORDER** by sending true copies thereof, addressed respectively to the persons and email addresses shown below:

<p>MATTHEW SCHRODER J SUPPLE LAW 990 FIFTH AVENUE SAN RAFAEL, CA 94901</p> <p>mschroeder@jssupplelaw.com</p>	<p>MATTHEW BORDEN, ESQ. BRAUNHAGEY & BORDEN LLP 351 CALIFORNIA STREET, 10TH FLOOR SAN FRANCISCO, CA 94104</p> <p>borden@braunhagey.com</p>
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I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.



By: K.Madden, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO