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10 **SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 STATE OF ARIZONA, *ex rel.*  
13 KRISTIN K. MAYES, Attorney General,

14 Plaintiff,

15 -vs.-

16 HERITAGE VILLAGE BLDG2, LLC, et  
17 al.;

18 Defendants.

Case No: CV2024-005359

**DECLARATION OF SHANE M. HAM  
IN SUPPORT OF STATE OF  
ARIZONA'S APPLICATION (WITH  
NOTICE) FOR APPOINTMENT OF  
RECEIVER**

(Assigned to Hon. Michael Gordon)

19  
20 Shane M. Ham declares as true under penalty of perjury the following:

21 1. I am over 18 years of age and competent to testify regarding the statements made in  
22 this Declaration.

23 2. I have been licensed to practice law in the State of Arizona since 2010. I graduated  
24 magna cum laude from the James E. Rogers College of Law at the University of Arizona in 2009,  
25 and then served for one term as a clerk to then-Vice Chief Justice Andrew D. Hurwitz at the  
26 Arizona Supreme Court. In 2010 I joined the Phoenix firm Osborn Maledon, P.A., where I

1 focused mainly on civil litigation, until leaving in 2019 to accept an in-house counsel position at  
2 Pravati Capital, LLC in Scottsdale, Arizona.

3 3. Since September 2023 I have served as Senior Litigation Counsel in the Consumer  
4 Protection and Advocacy Section of the Arizona Attorney General’s Office. At the direction of  
5 the Attorney General and the supervising attorneys in my section, I have spent the majority of my  
6 time focusing on investigations and litigation in cases affecting elderly and vulnerable Arizonans.  
7 My efforts include being part of the litigation team that filed suit against insulin manufacturers  
8 and pharmacy benefit managers regarding a scheme to inflate the price of insulin,<sup>1</sup> and an  
9 intervention under the Adult Protective Services Act (“APSA”) to block enforcement of a  
10 confidentiality clause in an arbitration agreement drafted by an assisted living facility.<sup>2</sup>

11 4. On November 28, 2023, my Section initiated a civil investigation of the Heritage  
12 Village Assisted Living facility (“Heritage Village”). I served as the lead attorney for that  
13 investigation.

14 5. As part of the investigation, I sent a Civil Investigative Demand (“CID”) to Heritage  
15 Village on December 20, 2023. The CID demanded production of 33 categories of documents.  
16 More than half of these document categories were documents required by Arizona regulation to  
17 be maintained and stored so they could be produced within two hours of a demand by ADHS. *See*  
18 A.A.C. § R9-10-803(E)(1).

19 6. During the course of that investigation, I gathered information from a wide variety  
20 of sources. Those sources include the limited responses received from Heritage Village in  
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22 <sup>1</sup> *State of Arizona v. Optum Inc. et al.*, No. CV2023-018501, Maricopa County Superior  
23 Court, filed Nov. 27, 2023. The case was removed to federal court and then transferred to the  
multidistrict insulin pricing matter in the District of New Jersey, where it remains ongoing.

24 <sup>2</sup> *Scheske v. The Goodman Group MN, LLC et al.*, No. CV2022-014439, Maricopa County  
25 Superior Court. The State’s motion to intervene was granted on February 6, 2024. The State filed  
26 its complaint-in-intervention and a consent judgment simultaneously on February 16, 2024. Final  
judgment was entered pursuant to Rule 54(b) on February 27, 2024, terminating the State’s  
involvement in the case.

1 response to the CID, the “AZ Care Check” database operated by the Arizona Department of Health  
2 Services (“ADHS”), state registered entity databases, court dockets, general search engines, and  
3 examinations under oath (“EUOs”) I conducted for three medical providers whose patients reside  
4 at Heritage Village.

5 7. Based on the information ascertained during the investigation, I personally drafted  
6 the Complaint for the above-numbered action, and I personally signed and filed the Complaint in  
7 compliance with my ethical duties under the Arizona Rules of Professional Conduct (Ariz. R. Sup.  
8 Ct. 42) and Rule 11 of the Arizona Rules of Civil Procedure.

9 8. A true and correct copy of the Complaint is attached hereto as **Exhibit A** [1].<sup>3</sup> The  
10 allegations set forth in the Complaint are true and correct to the best of my ability to determine  
11 such, and are incorporated into this Declaration as if set forth fully herein and declared under  
12 penalty of perjury.

### 13 **Lack of Cooperation by Heritage Village**

14 9. The purpose of the State’s investigation was to determine whether the health and  
15 safety of current and future Heritage Village residents is endangered by the current ownership and  
16 management of Heritage Village, and to determine whether any unfair or deceptive practices were  
17 occurring in the marketing of the facility’s services. To that end, the CID focused on four main  
18 categories of demands: (i) full disclosure of the ownership of Heritage Village; (ii) current  
19 compliance with state regulation, including qualifications of all caretaking staff; (iii) marketing  
20 and sales efforts; and (iv) prior history of complaints, lawsuits, and regulatory penalties. A copy  
21 of the CID is attached hereto as **Exhibit B** [62].

22 10. Heritage Village has not been promptly responsive or forthcoming with the  
23 demanded documents. At the request of counsel for Heritage Village, I agreed on behalf of the

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25 <sup>3</sup> All exhibits for this Declaration have been filed as a single, consecutively paginated  
26 document. The bracketed numbers in all citations to exhibits refer to those consecutive page  
numbers, which appear in the lower left corner of each page. The exhibits document also contains  
internal bookmarks linking to the cover sheet for each individual exhibit.

1 State to extended response deadlines and accepted partial rolling productions. On February 23,  
2 2024, counsel for Heritage Village sent a letter setting forth her client’s promised time frames for  
3 responding to the items in the CID. A true and correct copy of that letter is attached hereto as  
4 **Exhibit C** [76].

5 11. In that letter, Heritage Village promised to provide several categories of documents  
6 by March 1, 2024. Those include item 4 (list of natural persons exercising control over the Mesa  
7 facility); item 29 (facility license history); and item 33 (list of prior civil actions). *See* Ex. C [77-  
8 78]. These three items were not provided by March 1, 2024.

9 12. The February 23 letter also promised to provide a list of all persons who had  
10 received payments from Heritage Village in exchange for resident referrals by March 15, 2024  
11 (item 27 in the CID). *See* Ex. C [78]. That information was not provided by March 15.

12 13. Even where Heritage Village seemed to be cooperating with the investigation, the  
13 cooperation tended to be incomplete or confusing. For example, on February 27, 2024 counsel  
14 for Heritage Village sent a letter purporting to disclose all of the ownership of the licensed entity.  
15 A true and correct copy of that letter is attached hereto as **Exhibit D** [79].<sup>4</sup>

16 14. In the February 27 letter, Heritage Village represented that the current licensee for  
17 the facility (for which the letter gives an incorrect license number) is “Heritage Village Bldg 2  
18 LLC” which was claimed to be registered with the Arizona Corporation Commission as “Heritage  
19 Village Bldg2, LLC.” *See* Ex. D [80]. The letter represented that the sole owner of the licensed  
20 entity is “MRC VSL HV Management LLC,” which in turn is owned by “Madison Realty  
21 Companies, LLC” and “RSC Int, LLC.” *Id.* According to Heritage Village, these are the only  
22 entities with an ownership interest in the licensed entity. However, this information appears to  
23 be, at best, incomplete according to documents Heritage Village itself produced.

24 15. For example, Heritage Village produced the October 14, 2022 Master Lease  
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26 <sup>4</sup> The redactions in Exhibit D were made in an abundance of caution because the material  
may be covered by Rule 408 of the Arizona Rules of Evidence.

1 Agreement for the real property on which the Heritage Village is located. A true and correct copy  
2 of this Master Lease Agreement is attached hereto as **Exhibit E** [82].

3 16. The Master Lease Agreement executed by “MRC VSL HERITAGE VILLAGE II,  
4 LLC” (identified in the document as both “Owner” and “Lessor”) and “MRC VSL HV  
5 MANAGEMENT II, LLC” (identified as “Lessee”). *See* Ex. E at 1 [83].

6 17. The Master Lease Agreement contains numerous indications that the “Lessee” is the  
7 licensed operator of the Heritage Village assisted living facility. For example, Section 4.11(A)  
8 states that Lessee is “duly authorized and qualified to operate this type of facility in the State of  
9 Arizona.” *See* Ex. E at 9 [91]. Section 4.11(D)(1) states that Lessee “agrees to operate the Leased  
10 Premises as an assisted living facility.” *Id.* at 10 [92]. Section 4.01(E) requires Lessee to  
11 “maintain, or cause to be maintained, in good standing its Licenses” with ADHS. *Id.* at 6 [88].  
12 Section 4.09 forbids the Lessee from subletting the property, except that Lessee may enter into  
13 agreements “in the nature of assisted living rental, lease and/or services agreements with  
14 individual persons or vendors in the ordinary course of its operations.” *Id.* at 8 [90].

15 18. Despite all of these indications that MRC VSL HV Management II, LLC is the entity  
16 that controls the ADHS license to operate the Heritage Village facility, Heritage Village did not  
17 explain why it is not in the chain of ownership for the licensed entity. When I sought clarification  
18 from counsel for Heritage Village that this entity has no ownership interest in the licensed entity,  
19 counsel for Heritage Village emphatically denied any ownership, declaring that “MRC VSL HV  
20 Management, LLC” and “MRC VSL HV Management II, LLC” are “just coincidentally similar  
21 names.”

22 19. Heritage Village also produced a settlement agreement with ADHS setting the  
23 penalty for providing unlicensed care for several months during 2022 and 2023. A true and correct  
24 copy of that settlement agreement is attached hereto as **Exhibit F** [100].

25 20. That settlement agreement specifically lists the current license number under which  
26 the Heritage Village enterprise operates: AL12412C. *See* Ex. F at 3 [103]. The entity executing

1 that settlement agreement, which apparently has the authority to act on behalf of the current  
2 licensed entity, is “Heritage Village, L.L.C.” *See* Ex. F at 7 [107]. The signature for “Heritage  
3 Village, L.L.C.” was provided by Gary Langendoen, signing as “Administrator Manager” of the  
4 company. *Id.* Heritage Village offered no explanation how an entity with authority to settle  
5 regulatory penalties on behalf of the licensed entity is not in the ownership chain of the licensed  
6 entity.

7 21. Heritage Village also produced two blank Resident Admission Agreement forms,  
8 which are the standard forms used for the contracts between Heritage Village and its residents.  
9 The two blank residency agreements are attached hereto as **Exhibit G** [108].

10 22. One form is an agreement between a resident and “MRSC VSL Heritage Village  
11 Assisted Living.” *See* Ex. G at 1 [109]. The other form is an agreement between a resident and  
12 “Heritage Village Assisted Living.” *See* Ex. G at 12 [120]. In both of these agreements Section  
13 2.1 requires residents to pay their monthly fees to the entities named in the agreements. *See* Ex.  
14 G at 3 [111], 12 [122]. Heritage Village offered no explanation as to how the entities that receive  
15 payments from residents on behalf of the licensed entity are not in the ownership chain of the  
16 licensed entity. Heritage Village also failed to explain how these two named entities can possibly  
17 collect rent payments, as it appears neither entity is registered to do business in Arizona, or even  
18 exists.

19 23. Heritage Village failed to provide a complete explanation for even the most basic  
20 element of the investigatory demand, which is correctly identifying the licensed entity. Heritage  
21 Village contends in the February 27 letter that the licensed entity “Heritage Village Bldg 2 LLC”  
22 is identical with “Heritage Village Bldg2, LLC.” *See* Ex. D at 1 [80]. However, ADHS  
23 distinguished these two entities, having previously issued a license on September 1, 2020 to the  
24 “Bldg2” entity under a different license number and facility number. True and correct copies of  
25 the two different licenses are attached hereto as **Exhibit H** [131]. Heritage Village offers no  
26 explanation for why the previous license listed the “Bldg2” entity, whereas the current license

1 names an entity that does not exist.

## 2 Pending Revocation of Heritage Village License

3 24. On January 12, 2024, ADHS issued to Heritage Village a “Notice of Intent to  
4 Revoke Health Care Institution License and Notice of Right To Request Administrative Hearing”  
5 (the “Revocation Notice”). A true and correct copy of the Revocation Notice is attached hereto  
6 as **Exhibit I** [134].

7 25. The Revocation Notice states that ADHS intends to revoke the Heritage Village  
8 license because ADHS “has reasonable cause to believe that the Licensee and the Center have  
9 been, are, or may continue to be in substantial violation of [Arizona statutes and regulations],  
10 which results in a direct risk to the life, health and safety of the patients at the Center.” *See* Ex. I  
11 at 10 [144].

12 26. The violations discovered by ADHS that led to the Revocation Notice are  
13 summarized in the Complaint in this action. *See* Ex. A at ¶¶ 62-86 [14-18]. Many of the  
14 allegations inarguably present imminent danger to the Heritage Village residents, such as propping  
15 open doors that should be alarmed to prevent dementia patients from wandering, hiring caregivers  
16 who lack proper training, giving residents improper medication doses (or skipping doses entirely),  
17 and putting a toddler lock on a resident’s bedroom door, trapping the resident inside.

18 27. Although an administrative hearing on the Revocation Notice is currently set for  
19 March 29, 2024 (*see* Ex. A at ¶ 61 [14]), it is my understanding that the start date of the hearing  
20 is likely to be delayed for an amount of time yet to be determined.

21 28. If ADHS revokes the license under which the Heritage Village enterprise is  
22 currently operating, all of the approximately 150 residents will need to be relocated to different  
23 facilities.

24 29. Based on my review of the limited confidential patient records produced by Heritage  
25 Village and the citations issued to the facility by ADHS, moving the residents to new facilities  
26 will be a complicated and difficult undertaking. It may require transferring some residents to

1 facilities that are less convenient for family visitation. It may be difficult to find facilities with  
2 the space and available staffing to care for the dozens of bedbound Heritage Village residents who  
3 are unable to ambulate even with assistance. It may be difficult to locate resident representatives  
4 with the authority to approve such transfers, and some residents may need to have guardians  
5 appointed by the court before a transfer can be made.

6 **Immediate Danger to Bedbound Heritage Village Residents**

7 30. Based on the information gathered by ADHS during their December 2023 survey,  
8 the State's civil investigation focused in on bedbound residents, who are unable to ambulate even  
9 with assistance. Pursuant to state regulations, these vulnerable adults cannot stay at a facility in  
10 the license category of Heritage Village unless the resident's medical provider certifies in writing  
11 that the facility is able to meet the resident's needs as set forth in the resident's service plan. The  
12 State focused on these vulnerable adults to ensure all such certifications were in order. The events  
13 occurring as a result of this focus are detailed in the Complaint. *See* Ex. A at ¶¶ 96-112 [20-23].

14 31. In summary, Heritage Village agreed to produce the written certifications and  
15 service plans for all bedbound residents. When those documents were finally produced, many of  
16 the service plans and a majority of the written certifications had been created after the demand  
17 date. That is to say, Heritage Village did not produce documents from their files, but rather created  
18 documents that did not previously exist. Heritage Village did not explain why the documents did  
19 not exist prior to the demand.

20 32. In reviewing the documents produced by Heritage Village, it did not appear to me  
21 that the creation of the new documents was a good-faith attempt to come into belated compliance  
22 with state regulations. Rather, it appeared that the documents had been created merely to paper  
23 the file, because dozens of the forms had been signed in batches by just three providers. *See* Ex.  
24 A at ¶¶ 101-103 [21].

25 33. I conducted EUOs of the three providers. All three providers confirmed that they  
26 did not sign the forms because they had reviewed the service plans and determined that the patients



1 could receive appropriate care at Heritage Village. Rather, all three providers admitted that they  
2 signed the forms without understanding what they were signing, without knowing the  
3 requirements that must be met before certification, and without reviewing the service plans for  
4 the residents. One provider admitted she signed the forms without reading them. One provider  
5 admitted he had never been to Heritage Village and did not know his patients resided there. All  
6 of them testified that Heritage Village did not include copies of the corresponding service plans  
7 when it gave the certification forms to the providers for signature. *See* Ex. A at ¶¶ 105-111 [21-  
8 23].

9 34. As of this date, it appears that at least 33 bedbound residents continue to reside at  
10 Heritage Village without a proper certification as required by law. Because no medical providers  
11 have engaged in a substantive evaluation of the needs of the bedbound residents and the ability of  
12 Heritage Village to meet those needs, it appears those residents are in ongoing danger.

### 13 **Potential Financial Instability at Heritage Village**

14 35. The investigation also revealed that the core ownership group for Heritage Village  
15 (Madison Realty Companies, Matthew Arnold and Gary Langendoen) also owns and operates at  
16 least two other facilities in Arizona, Visions Senior Living at Apache Junction and Visions Senior  
17 Living at Mesa.

18 36. On December 16, 2021, Sunwest Bank filed a lawsuit against MRSC AZ Mesa DST,  
19 the purported owner and/or operator of the Visions facility in Mesa. A true and correct copy of  
20 the complaint in that action (without exhibits) is attached hereto as **Exhibit J** [148].

21 37. The lawsuit alleged that the defendant trust had defaulted on a \$2.5 million loan  
22 from Sunwest Bank, and had improperly diverted funds from the facility to the “Parent Trust,  
23 investors, affiliates and third parties.” *See* Ex. J at ¶¶ 9 [151], 14 [152], 18 [153]; *see also* Ex. A  
24 at ¶¶ 92-94 [19-20].

25 38. The Sunwest Bank complaint stated that the collateral for this loan was “all of  
26 Defendant’s right, title and interest in and to all current and future Rents.” *See* Ex. J at ¶ 4 [150].

1 The complaint goes on to quote the definition of Rents in a footnote, noting that it includes all  
2 rents collected “from the Land and the Improvements” on the Visions Mesa property. *Id.* at ¶ 4  
3 n.2 [150].

4 39. Although MRSC AZ Mesa DST was the entity entitled to collect rents for the  
5 Visions property in Mesa, as established in the loan agreement with Sunwest Bank, the entity  
6 licensed to operate the facility is MRSC AZ Mesa Master Tenant, LLC. *See* Ex. A at ¶ 42 [11].

7 40. A receiver was appointed in the Sunwest Bank case, and regular reports were  
8 submitted to the court. The receiver submitted one such report on August 1, 2022. A true and  
9 correct copy of that report is attached hereto as **Exhibit K** [164].

10 41. The receiver’s report indicated that both Visions facilities, in Mesa and in Apache  
11 Junction, were under receivership at the time with the same receiver appointed to handle both  
12 receiverships and the receiver’s fees split equally between the two facilities. *See* Ex. K at 5 [169]  
13 (“Receiver Fees and Expenses”).

14 42. The receiver’s report also indicated that the ownership group had multiple “related”  
15 facilities in Utah that were also under receivership at the same time. *See* Ex. K at 4 [168]  
16 (“Interface with the Utah Receiver”).

17 43. The Maricopa County Recorder database contains at least two deeds of trust for  
18 entities related to Heritage Village that appear not to have corresponding releases. One is a deed  
19 of trust for a loan made by Great Western Bank in June 2019. A certified copy of the recorded  
20 deed of trust is attached hereto as **Exhibit L** [171]. The other is a second deed of trust for a loan  
21 made by Madison Funding I, LLC in June 2019. A certified copy of the recorded second deed of  
22 trust is attached hereto as **Exhibit M** [201].

23 44. The Great Western Bank deed of trust identifies as “Trustor” a single entity: MRC  
24 VSL Heritage Village II, LLC. *See* Ex. L at 1 [172]. This entity was not identified by Heritage  
25 Village as being in the chain of ownership for the licensed entity. *See* Ex. D [79].

26 45. The Great Western Bank deed of trust identifies as “Borrower” two entities: MRC

1 VSL Heritage Village, LLC and MRC HV Investors, LLC. *See* Ex. L at 1 [172]. Neither of these  
2 entities was identified as being in the chain of ownership for the licensed entity. *See* Ex. D [79].

3 46. The Great Western Bank deed of trust contains multiple provisions indicating that  
4 “Trustor” MRC VSL Heritage Village II, LLC exercises authority and control over the licensed  
5 entity. For example, Section 3.2(a) imposes multiple duties on Trustor to maintain the premises,  
6 but for each duty it states that either Trustor shall carry out the duty “or shall cause Facility  
7 Manager” to carry out the duty. *See* Ex. L at 10-11 [181-182]. The term “Facility Manager” is  
8 not defined in the deed of trust, but presumably it refers to the manager that the Heritage Village  
9 facility must appoint by law. *See* A.A.C. § R9-10-801(5). Similarly, Section 3.2(b) states that  
10 Trustor will comply with legal requirements affecting the premises “or shall cause Facility  
11 Manager to” do so. *See* Ex. L at 11 [182].

12 47. The Great Western Bank deed of trust indicates that these two non-owner entities  
13 borrowed \$9,487,500 from Great Western Bank. *See* Ex. L at 1 [172]. The loan is secured by,  
14 *inter alia*, a lien on the facility’s real property, *see* Ex. L at 2 [173], and an assignment of rents  
15 generated by the facility, *see* Ex. L at 4 [175].

16 48. The Madison Funding second deed of trust identifies as “Trustor” a single entity:  
17 MRC VSL Heritage Village II, LLC, the same Trustor as the Great Western Bank deed of trust.  
18 *See* Ex. M at 1 [202]. This entity was not identified by Heritage Village as being in the chain of  
19 ownership for the licensed entity. *See* Ex. D [79].

20 49. The Madison Funding second deed of trust identifies as “Borrower” four entities:  
21 MRC VSL Heritage Village, LLC; MRC VSL Heritage Village II, LLC; MRC VSL HV  
22 Management, LLC; and MRC VSL HV Management II, LLC. *See* Ex. M at 1 [202]. Only one  
23 of these four entities was identified as being in the chain of ownership for the licensed entity. *See*  
24 Ex. D [79].

25 50. As with the Great Western Bank deed of trust, the Madison Funding second deed of  
26 trust contains multiple provisions in Sections 3.2(a) and 3.2(b) indicating that “Trustor” exercises

1 control over an undefined “Facility Manager.” *See* Ex. M at 11-12 [212-213].

2 51. The Madison Funding second deed of trust indicates that the four Borrower entities  
3 borrowed \$5,115,000 from Madison Funding I, LLC. *See* Ex M. at 1 [202]. As with the Great  
4 Western Bank deed of trust, the loan is secured by a lien on real property, *see* Ex. M at 2 [203],  
5 and an assignment of rents generated by the facility, *see* Ex. M at 5 [206].

6 52. Together, the two deeds of trust indicate that the ownership group for Heritage  
7 Village has borrowed at least \$14,602,500 against the Heritage Village property and stream of  
8 income.

9  
10 I declare under penalty of perjury that the foregoing is true and correct.

11  
12 DATED this 22nd day of March, 2024.

13 /s/ Shane M. Ham  
14 Shane M. Ham  
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