

# EXHIBIT B

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12 **SUPERIOR COURT OF THE STATE OF ARIZONA**  
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 WENDY KNIGHT, an individual,

15 Plaintiff; and

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

17 Plaintiff-Intervenor,

18 v.

19 SUNWEST CHOICE HEALTH AND REHAB, an  
20 Arizona Corporation; APACHE TRAIL  
21 HEALTHCARE, INC., an Arizona Corporation;  
22 BANDERA HEALTHCARE, LLC, a Foreign  
23 Corporation; THE ENSIGN GROUP, INC., a  
24 Foreign Corporation; JOHN and JANE DOES I-X;  
25 BLACK and WHITE PARTNERSHIPS I-X; and  
26 ABC CORPORATIONS I-X,

27 Defendants.

Case No.: CV2024-007103

**COMPLAINT-IN-INTERVENTION**

**(Declaratory Judgment)**

(Assigned to the Hon. Rodrick Coffey)

28 Plaintiff, State of Arizona *ex rel.* Kristin K. Mayes, the Attorney General (the “State”),  
alleges the following for its Complaint-in-Intervention (the “Complaint”) against Sunwest

1 Choice Health and Rehab, Apache Trail Healthcare, Inc., Bandera Healthcare, LLC, and The  
2 Ensign Group, Inc. (“Defendants”).

### 3 INTRODUCTION

4 1. Plaintiff Wendy Knight filed this lawsuit on April 1, 2024 on behalf of herself and  
5 all statutory beneficiaries seeking recovery for . Plaintiff alleges, *inter alia*, elder abuse and elder  
6 neglect under the Adult Protective Services Act, A.R.S. § 46-451 *et seq* (“APSA”). According to  
7 the Complaint, Plaintiff’s late husband, decedent Robert Knight, was a patient at Defendants’  
8 facility, and during his time there he developed a bed sore so horrific it lead to his death by  
9 bacterial pneumonia and osteomyelitis (bone infection).

10 2. When Mr. Knight was accepted as a resident at Sun West, Plaintiff Wendy Knight  
11 executed numerous documents on his behalf, including an “Agreement to Arbitrate Disputes”  
12 between Mr. Knight and the facility (the “Arbitration Agreement” or “Agreement”). After being  
13 served with this lawsuit, Defendants moved the Court to enforce the Arbitration Agreement and  
14 stay this litigation pending the outcome of any arbitration.

15 3. The Arbitration Agreement violates APSA because it contains a confidentiality  
16 clause and other provisions that seek to strip the Attorney General of her statutory role in  
17 protecting vulnerable adults. This statutory role includes monitoring all privately filed APSA  
18 cases and logging the outcome in a registry, notifying appropriate licensing agencies, and  
19 intervening in cases the Attorney General deems to be of special public importance.

20 4. The Attorney General seeks to intervene in this case for the limited purpose of  
21 seeking a declaratory judgment that the Arbitration Agreement is void and unenforceable due to  
22 substantive unconscionability, illegality, and contravention of public policy.

### 23 JURISDICTION AND VENUE

24 5. The State brings this action pursuant to APSA, Arizona Revised Statutes (“A.R.S.”)  
25 §§ 46-451 to -474, and the Uniform Declaratory Judgments Act, A.R.S. §§ 12-1831 to -1846 to  
26 obtain a declaration that the confidentiality clause in the Arbitration Agreement violates APSA  
27 and therefore voids the Agreement in its entirety.

28 6. This Court has subject-matter jurisdiction pursuant to A.R.S. § 12-123.

1 7. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

2 8. The State is not barred by any statute of limitations in bringing its claims pursuant  
3 to A.R.S. § 12-510.

4 **PARTIES**

5 9. Plaintiff-Intervenor is the State of Arizona *ex rel.* Kristin K. Mayes, the Attorney  
6 General of Arizona, who is authorized to bring this action pursuant to APSA.

7 10. Plaintiff Wendy Knight is the widow of decedent Robert Knight. Plaintiff filed this  
8 lawsuit on behalf of all statutory beneficiaries, who allege APSA violations against Defendants.

9 11. Defendant Sunwest Choice Health and Rehab (“Sun West Choice”), on information  
10 and belief, refers to Sun West Choice Health and Rehabilitation, a registered trade name for  
11 Apache Trail Healthcare, Inc. that is applied to the licensed skilled nursing facility located in  
12 Maricopa County, Arizona. The facility is licensed by the Arizona Department of Health Services  
13 (“ADHS”) under the name “Sun West Choice Healthcare & Rehab” and license number NCI-  
14 2648.

15 12. Defendant Apache Trail Healthcare, Inc. (“Apache Trail”) is a Nevada corporation  
16 registered to do business in Arizona. Apache Trail is the named entity holding the ADHS license  
17 to operate the Sun West Choice facility.

18 13. Defendant Bandera Healthcare LLC (“Bandera”) is a Nevada limited liability  
19 company registered to do business in Arizona. Plaintiff alleges Defendant Apache Trail is a  
20 wholly owned subsidiary of Bandera.

21 14. Defendant The Ensign Group, Inc. (“Ensign Group”) is a Delaware corporation  
22 publicly traded under the ticker symbol ENSG. On information and belief, Ensign Group operates  
23 36 facilities in Arizona through various wholly owned subsidiaries, including the Sun West  
24 Choice facility.

25 **PLAINTIFF’S LAWSUIT AND DEFENDANTS’ RESPONSE**

26 15. Decedent Robert Knight was admitted to the Sun West Choice facility on or about  
27 July 26, 2019. The admission paperwork was executed by his wife, Plaintiff Wendy Knight,  
28 because Mr. Knight was known to be suffering from advanced dementia and was unable to execute

1 the forms on his own.

2 16. While a patient at Sun West Choice, Mr. Knight suffered one or more pressure sores,  
3 including one sore that developed to a size of approximately 11 cm by 14 cm with a depth of 4  
4 cm. This massive sore in turn led to a massive infection, which eventually resulted in Mr. Knight's  
5 death. Plaintiff filed this lawsuit on April 1, 2024.

6 17. On or about April 30, 2024 Defendants filed a "Motion to Compel Binding  
7 Arbitration." Defendants' motion sought to enforce the Arbitration Agreement executed by  
8 Plaintiff on behalf of her deceased husband.

9 18. The Arbitration Agreement states that it is "entered into between the Facility and  
10 Resident." The Agreement's signature block identifies Robert Knight as "Resident" but nothing  
11 in the Agreement indicates the identity of "the Facility." However, in the motion to compel  
12 Defendants clearly and repeatedly state that the Arbitration Agreement is between Mr. Knight as  
13 Resident and "Sun West Choice" as Facility.

14 19. In that same motion Defendants define "Sun West Choice" as a collective  
15 designation for Defendants Apache Trail, Bandera, and Ensign Group. Based on the admission  
16 that all three of these Defendants are defined as "Facility" in the Agreement and all three  
17 Defendants are bound by the Agreement, these three Defendants are all proper parties to be bound  
18 by a declaration that the Arbitration Agreement is void as illegal and violative of public policy.

19 20. The Arbitration Agreement states: "Except as necessary in judicial review of  
20 arbitration proceedings, all matters relating to any arbitration shall be confidential, including the  
21 existence and subject of the arbitration." Aside from post-arbitration judicial review proceedings,  
22 the Agreement contains no exceptions to the confidentiality clause.

23 21. On information and belief, the Arbitration Agreement at issue in this lawsuit is  
24 substantially similar to arbitration agreements used at all Arizona facilities controlled by  
25 Defendant Ensign Group.

26 22. All such arbitration agreements used by Defendant Ensign Group are subject to  
27 APSA because the express terms of the Agreement make it applicable to "alleged violations of  
28 the Adult Protective Services Act" and because any person admitted to an Arizona facility owned

1 and/or controlled by Ensign Group meets the definition of a vulnerable adult under APSA.

2 **THE ATTORNEY GENERAL’S ROLE UNDER APSA**

3 23. In passing APSA, the Arizona legislature gave an important role to the Attorney  
4 General in the statutory scheme in order to best protect all vulnerable adults in the State.

5 24. Among the unique powers granted to the Attorney General by APSA is the  
6 unconditional right to intervene in any case where the Attorney General certifies that the case is  
7 of “special public importance.” A.R.S. § 46-455(M). The Attorney General may also initiate  
8 lawsuits “to prevent, restrain or remedy the conduct described in” APSA. A.R.S. § 46-455(E).

9 25. APSA requires any person who files a lawsuit alleging abuse of a vulnerable adult  
10 to provide notice and a copy of the complaint to the Attorney General, who in turn is required to  
11 notify the appropriate licensing agency. A.R.S. §§ 46-455(J); 46-457(A).

12 26. The statute also requires the Attorney General to maintain a registry of all persons  
13 who were found to be responsible for abuse, neglect, or exploitation of a vulnerable adult. A.R.S.  
14 § 46-457(D). The registry is to include information about the general nature of the conduct and  
15 the final disposition of the legal action. *Id.*

16 27. APSA authorizes many extraordinary remedies for violations of the statute. With  
17 respect to an “enterprise” that violates APSA, the remedies include forcing persons with an  
18 ownership interest in an enterprise to divest themselves of that interest, as well as ordering the  
19 dissolution or reorganization of any enterprise. A.R.S. § 46-455(H). These latter two of these  
20 remedies are often referred to colloquially as the “corporate death penalty.”

21 28. The statute contemplates the Attorney General’s role to be distinct from private  
22 plaintiffs who file lawsuits alleging abuse, neglect, or exploitation of vulnerable adults. Private  
23 lawsuits brought by vulnerable adults or their families are necessarily backward-looking, focused  
24 on the specific treatment of one vulnerable adult and seeking compensation for those past actions.  
25 Private citizens have little incentive to spend legal fees to seek forward-looking remedies, as the  
26 vulnerable adult generally no longer resides at the defendant facility. The Attorney General is the  
27 party with the incentive to “prevent” and “restrain” future harm to vulnerable adults.

28 29. In this regard, the Arizona legislature’s adoption of APSA reflects a strong public

1 policy toward transparency, shining light on the abusive behavior of persons and entities  
2 responsible for taking care of vulnerable adults, and allowing families considering long-term care  
3 for vulnerable adults to make informed decisions about the facilities where they admit their loved  
4 ones.

5 30. The Arizona legislature also structured APSA to give the Attorney General a key  
6 role in protecting the public from those whose greed and indifference lead to the abuse, neglect,  
7 or exploitation of the vulnerable adults APSA seeks to protect.

8 31. Any contractual arrangement that blocks the Attorney General from knowing about  
9 legal actions alleging violations of APSA, or blocking the Attorney General's ability to intervene  
10 and participate in those actions, is void for illegality and violation of public policy.

11 32. Before intervening, APSA requires the Attorney General to certify that a case is of  
12 special public importance. Often the public importance of a case becomes clear only after  
13 production of evidence. Any arbitration agreement that requires secrecy blocks the Attorney  
14 General's ability to determine the importance of the case, and thereby effectively blocks the  
15 intervention power granted to the Attorney General by the legislature.

16 **DEFENDANTS' EFFORTS TO AVOID APSA**

17 33. The Arbitration Agreement at issue in this action attempts to avoid any involvement  
18 by the Attorney General, along with the transparency and significant remedies contemplated by  
19 the Arizona legislature in adopting APSA.

20 34. The confidentiality clause in the Arbitration Agreement requires the parties to keep  
21 everything about the arbitration confidential until after a final award is issued and becomes ripe  
22 for judicial review and confirmation. This expansive secrecy requirement includes even "the  
23 existence and subject of the arbitration."

24 35. This confidentiality clause directly violates APSA by prohibiting claimants from  
25 fulfilling their statutory duty to notify the Attorney General of pending legal action.

26 36. APSA also requires the person who files an action to submit a report on the "final  
27 disposition" of the matter within 30 days of the final action being taken. A.R.S. § 46-457(A).  
28 The confidentiality clause in the Arbitration Agreement would block a plaintiff from complying

1 with this statutory requirement.

2 37. Maintaining secrecy during the pendency of an arbitration blocks the Attorney  
3 General from knowing about the evidence adduced during the course of the proceeding, which  
4 prevents the Attorney General from making a determination under APSA that a particular matter  
5 is of “special public importance.”

6 38. The Arbitration Agreement seeks to avoid all of these statutory requirements by  
7 forcing plaintiffs to initiate arbitration and keep the entire proceeding secret, including the very  
8 existence of any claim against Defendants. This has the effect of blocking the Attorney General’s  
9 exercise of APSA power, as well as blocking potential future residents from learning about  
10 conditions at Sun West Choice.

11 **COUNT ONE – DECLARATORY RELIEF**

12 39. All allegations set forth in paragraphs 1-38 are incorporated as if restated herein.

13 40. The State of Arizona, by and through the Attorney General, is a party whose rights  
14 and legal relations are affected by the Arbitration Agreement.

15 41. Entry of a declaratory judgment in this action will terminate the controversy  
16 between the State and Defendants.

17 42. The State is entitled to a declaratory judgment from the Court stating that the  
18 Arbitration Agreement is void *ab initio* and unenforceable on the grounds of substantive  
19 unconscionability, illegality, and violation of public policy.

20 **PRAYER FOR RELIEF**

21 WHEREFORE The State of Arizona prays the Court enter judgment as requested by the  
22 State declaring as follows:

23 A. The confidentiality clause in the Arbitration Agreement violates Arizona law and  
24 public policy, and therefore is void and unenforceable;

25 B. Taken as a whole, the Arbitration Agreement has the purpose and effect of blocking  
26 the Attorney General from carrying out duties mandated by the Adult Protective Services Act to  
27 protect vulnerable adults from abuse, neglect, and exploitation;

28 C. Taken as a whole, the Arbitration Agreement is substantively unconscionable,



1 violates Arizona law, and is contrary to Arizona public policy;

2 D. The Arbitration Agreement is void *ab initio* and therefore unenforceable and  
3 without effect;

4 E. All similar arbitration agreements between Defendants and Arizona residents  
5 containing the confidentiality clause are void *ab initio* and therefore unenforceable and without  
6 effect;

7 F. There is no just reason for delay and therefore final judgment is entered with respect  
8 to the State's claims under Rule 54(b) of the Arizona Rules of Civil Procedure;

9 G. Awarding taxable costs to the State upon application; and

10 H. All such other relief as the Court may find just and equitable.

11  
12  
13 DATED this \_\_\_\_ day of \_\_\_\_\_, 2024.

14 **KRISTIN K. MAYES**  
15 ATTORNEY GENERAL

16  
17 By: \_\_\_\_\_  
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