

2014 WL 5137906 (Ohio Com.Pl.) (Trial Pleading)
Court of Common Pleas of Ohio.
Montgomery County

Courtney BROWN, Individually and as Administrator of the Estate
and Wrongful Death Beneficiaries of Patricia Brown, Plaintiff,

v.

EXTENDICARE, INC.; Extencicare Health Services, Inc. Lexis Document Services, Inc. Extencicare Health Network, Inc. Lexis Document Services, Inc. Extencicare Health Facilities, Inc. CSC-Lawyers Incorporating Service Company Extencicare Homes, Inc. Lexis Document Services, Inc. Extencicare Holdings, Inc. CSC-Lawyers Incorporating Service Company Northern Health Facilities, Inc. Lexis Document Services, Inc. Dayton Care, LLC Lexis Document Services, Inc. Wes Ramsey John Does 1 Through 10; and Unidentified Entities 1 Through 10 (as to Arbors at Dayton), Defendants.

No. 2014CV05655.
October 1, 2014.

Jury Demanded

Complaint

McHugh Fuller Law Group, PLLC, [Michael J. Fuller, Jr.](#), OH Bar No. 90250, mike@mchughfuller.com, [D. Bryant Chaffin](#), OH Bar No. 90249, bryant@mchughfuller.com, 97 Elias Whiddon Rd., Hattiesburg, MS 39402, T: 601-261-2220, F: 601-261-2481, for plaintiff Courtney Brown, Individually and on behalf of the Wrongful Death Beneficiaries of Patricia Brown,

Plaintiff, Courtney Brown, Individually and as Administrator of the Estate, on behalf of the Estate of Patricia Brown, by and through Courtney Brown, for the Estate of Patricia Brown, and for the use and benefit of the Estate of Patricia Brown, and for the use and benefit of the wrongful death beneficiaries of Patricia Brown, and for her causes of action against Defendants, states:

JURISDICTIONAL STATEMENT

1. Patricia Brown was, at all times material hereto, a resident of Arbors at Dayton, a skilled nursing facility located at 320 Albany Street, Dayton, Ohio, 45417, from on or about April 2013, through on or about July 30, 2013, and suffered personal injuries and damages while a resident there. Patricia Brown died on or about July 30, 2013, and possessed a claim for such personal injuries and damages, which claim survived to her Estate.

2. Extencicare, Inc. is in the business of operating nursing homes. Its home office is in Markham, Ontario with its United States office located at 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903 is unknown.

3. Extencicare, Inc. had made annual filings, disclosing the nature of its business and finances, to the federal Toronto Stock Exchange (TSX). In its TSX filings, Extencicare, Inc. reveals itself to be a top-down operation, fully controlling its wholly-owned subsidiaries, and operating as one business, indivisible and indistinguishable from the individual nursing home facilities.

4. In its annual reports, filed with the Toronto Stock Exchange (TSX) annually, Extencicare, Inc. notes "...operating 258 senior care centers with capacity for 28,818 residents at December 31, 2009..." Extencicare, Inc. also states that they "help people live better by providing quality, cost-effective health care and rehabilitation primarily to seniors in a resident-directed environment."

Extencicare, Inc. claims “our values guide our behavior and determine our future. That is why we remain committed to upholding the core values that have driven Extencicare's success for over 40 years. This means providing quality services to the residents and patients who entrust us with their health and dignity and endeavoring to make each day an affirmation of life.”

5. The following information is contained in Extencicare, Inc.'s Annual Report for the year 2009:

a. Extencicare, Inc. reported operating 258 nursing facilities with a total of 28,818 licensed beds. Of the 258 nursing facilities operated by Extencicare, Inc. nationwide, the majority were owned by Extencicare, Inc.

6. Extencicare, Inc.'s management of its nursing homes includes regularly approving reports submitted from the facilities including, labor reports, payroll reports, profit and loss statements, budget fluctuation analyses, and patient reports. The Board of Directors for Extencicare, Inc. approves the budgets for the nursing homes and issues checks to vendors and employees of the facilities.

7. Extencicare, Inc. is and was directly responsible for training and patient care in each of its facilities nationwide. The training provided by Extencicare, Inc. for all employees involved in patient care, is and was to include training on policies, procedures and other requirements applicable to the documentation of medical records; the personal obligation of each individual involved in patient care, documentation, or reimbursement processes to ensure that such information provided is accurate and applicable statutes, regulations, program requirements and directives relevant to the person's duties.

8. Extencicare, Inc. controls and approves the budget of all of its facilities, including Arbors at Dayton through its Board of Directors.

9. Extencicare, Inc. through its Board of Directors and budgeting process ultimately controlled the number of staff at the nursing home, as well as available supplies.

10. Extencicare, Inc. was responsible for auditing patient care at each facility to ensure that residents received adequate care.

11. Separate Defendant Extencicare, Inc.'s principal place of business is 3000 Steeles Avenue, East, Suite 700, Markham, Ontario, Canada L3R 9W2. The agent for service for Ministry of the Attorney General, Ontario Court of Justice, 393 Main St., Haileybury, ON POJ 1K0. Extencicare, Inc. was, and remains, a corporation engaged in the custodial and personal care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Dayton. Additionally, Extencicare, Inc. was not and has never been “licensed” as an entity entitled to operate Arbors at Dayton.

12. Separate Defendant Extencicare Health Services, Inc. is a Delaware corporation with its principal place of business at 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for Extencicare Health Services, Inc. is Lexis Document Services, Inc. 50 W. Broad St., Suite 1800, Columbus, Ohio 43215. Extencicare Health Services, Inc. was, and remains, a corporation engaged in the custodial and personal care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Dayton. Additionally, Extencicare Health Services, Inc. was not and has never been “licensed” as an entity entitled to operate Arbors at Dayton.

13. Separate Defendant Extencicare Health Network, Inc. is a Delaware corporation with its principal place of business at 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for Extencicare Health Network, Inc. is Lexis Document Services, Inc. 50 W. Broad St., Suite 1800, Columbus, Ohio 43215. Extencicare Health Network, Inc. was, and remains, a corporation engaged in the custodial and personal care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Dayton. Additionally, Extencicare Health Network, Inc. was not and has never been “licensed” as an entity entitled to operate Arbors at Dayton.

14. Separate Defendant Extencicare Health Facilities, Inc. is a Delaware corporation with its principal place of business at 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for Extencicare Health Facilities, Inc. is CSC- Lawyers Incorporating Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717. Extencicare Health Facilities, Inc. was, and remains, a corporation engaged in the custodial and personal care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Dayton. Additionally, Extencicare Health Facilities, Inc. was not and has never been “licensed” as an entity entitled to operate Arbors at Dayton.

15. Separate Defendant Extencicare Homes, Inc. is a Delaware corporation with its principal place of business at 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for Extencicare Health Network, Inc. is Lexis Document Services, Inc. 50 W. Broad St., Suite 1800, Columbus, Ohio 43215. Extencicare Homes, Inc. was, and remains, a corporation engaged in the custodial and personal care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Dayton. Additionally, Extencicare Homes, Inc. was not and has never been “licensed” as an entity entitled to operate Arbors at Dayton.

16. Separate Defendant Extencicare Holdings, Inc. is a Delaware corporation with its principal place of business at 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for Extencicare Holdings, Inc. is CSC- Lawyers Incorporating Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717. Extencicare Holdings, Inc. was, and remains, a corporation engaged in the custodial and personal care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Dayton. Additionally, Extencicare Health Services, Inc. was not and has never been “licensed” as an entity entitled to operate Arbors at Dayton.

17. Separate Defendant Northern Health Facilities, Inc. is a Delaware corporation with its principal place of business at 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for Northern Health Facilities, Inc. is Lexis Document Services, Inc. 50 W. Broad St., Suite 1800, Columbus, Ohio 43215. Northern Health Facilities, Inc. was, and remains, a corporation engaged in the custodial and personal care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Dayton. Additionally, Northern Health Facilities, Inc. was not and has never been “licensed” as an entity entitled to operate Arbors at Dayton.

18. Separate Defendant Dayton Care, LLC is an Ohio corporation with its principal place of business at 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for Dayton Care, LLC is Lexis Document Services, Inc. 50 W. Broad St., Suite 1800, Columbus, Ohio 43215. Dayton Care, LLC was, and remains, a corporation engaged in the custodial and personal care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Dayton.

19. Separate Defendant, Wes Ramsey, material hereto is an administrator of Arbors at Dayton. Wes Ramsey is a resident citizen of the State of Ohio. Defendant, Wes Ramsey, for all times material to this lawsuit conducted business in Ohio and continues to do business in Ohio. Defendant Wes Ramsey's contacts with Ohio are systematic and ongoing such that Defendant Wes Ramsey could reasonably expect to be haled into an Ohio court.

20. Separate Defendants John Does 1 through 10 are individuals whom Plaintiff is currently unable to identify despite diligent efforts. Said Defendants are named insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of, or in the staffing, supervision, administration and direction of the care and treatment of Patricia Brown during her residency at Arbors at Dayton. Alternatively, Defendants are liable for the negligent and/or otherwise tortious acts and/or omissions of others with respect to the care and treatment of Patricia Brown during her residency at Arbors at Dayton.

21. Separate Defendants Unidentified Entities 1 through 10 are entities whom Plaintiff is currently unable to identify despite diligent efforts. Defendants are named insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of Patricia Brown during her residency at Arbors at Dayton. Alternatively, Defendants are

liable for the negligent and/or otherwise tortious acts and/or omissions of others with respect to the care and treatment of Patricia Brown during her residency at Arbors at Dayton.

22. At all times material hereto, Defendants owned, operated, managed and/or controlled, Arbors at Dayton in Montgomery County, Ohio and are therefore directly liable for all the care provided at Arbors at Dayton. The actions of each of Arbors at Dayton's servants, agents and employees as set forth herein, are imputed to Extencicare, Inc., Extencicare Health Services, Inc., Extencicare Health Network, Inc., Extencicare Health Facilities, Inc., Extencicare Homes, Inc., Extencicare Holdings, Inc., Northern Health Facilities, Inc., Dayton Care, LLC, Wes Ramsey, John Does 1 through 10, and Unidentified Entities 1 through 10.

23. Whenever the term "Defendants" is utilized within this suit, such term collectively refers to and includes all named Defendants in this lawsuit.

24. Whenever the term "Nursing Home Defendants" is utilized within this suit, such term collectively refers to and includes Extencicare, Inc., Extencicare Health Services, Inc., Extencicare Health Network, Inc., Extencicare Health Facilities, Inc., Extencicare Homes, Inc., Extencicare Holdings, Inc., Northern Health Facilities, Inc., Dayton Care, LLC.

25. Whenever the term "Administrator Defendant" is utilized within this suit, such term refers to Wes Ramsey.

26. Separate Defendant Extencicare, Inc., Extencicare Health Services, Inc., Extencicare Health Network, Inc., Extencicare Health Facilities, Inc., Extencicare Homes, Inc., Extencicare Holdings, Inc., Northern Health Facilities, Inc., Dayton Care, LLC, own, operate, manage, and/or control nursing homes throughout Ohio including, but not limited to, Montgomery County. All corporate Defendants have regular and continuous business in Montgomery County. Defendants were, and remain, owners and/or managers of an institution, residence or place which is advertised, offered, maintained or operated for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation in Montgomery County.

27. Jurisdiction of this Court is proper in the Montgomery County Court of Common Pleas in that the amount in controversy, exclusive of interest and costs, far exceeds the minimum jurisdictional limits of this Court.

28. Pursuant to Rule 10(D)(2)(b), Plaintiff has filed a motion to extend the period of time to file an affidavit of merit, attached hereto as Exhibit A. Plaintiff has also attached a proposed order granting the same. See Proposed Order, attached hereto as Exhibit B.

29. Prior to April 2013, Patricia Brown was no longer competent to handle her own affairs, and her cognitive and physical skills were impaired. She no longer had the conscious awareness necessary to be able to fully comprehend all of the elements necessary to know that she had been the victim of nursing home negligence and resident rights violations and this condition continued until the time of her death.

FACTUAL SUMMARY

30. On or about April 2013, Patricia Brown at the age of 64 was admitted to Arbors at Dayton, and she remained a resident of the nursing home until on or about July 30, 2013, as a result of the injuries she suffered at Defendants' facility.

31. Defendants were well aware of Patricia Brown's medical condition and the care that she required when they represented that they could adequately care for her needs. Defendants made affirmative representations to Patricia Brown's family that the appropriate level of care would be provided when the Defendants knew, because of budgetary restrictions on staffing and supplies, that residents, including Patricia Brown, would not get the necessary care.

32. Defendants held themselves out as being:

- a. Skilled in the performance of nursing, rehabilitative and other medical support services;
- b. Properly staffed, supervised, and equipped to meet the total needs of its nursing home residents;
- c. Providing around the clock skilled nursing care;
- d. Able to specifically meet the total nursing home, medical, and physical therapy needs of Patricia Brown and other residents like her; and,
- e. Licensed and complying on a continual basis with all rules, regulations, and standards established for nursing homes, nursing home licensees and nursing home administrators.

33. Defendants failed to discharge their obligations of care to Patricia Brown. As a consequence thereof, Patricia Brown suffered catastrophic injuries, extreme pain, suffering, and mental anguish. The scope and severity of the recurrent wrongs inflicted upon Patricia Brown while under the care of the facility accelerated the deterioration of her health and physical condition beyond that caused by the normal aging process and resulted in physical and emotional trauma which includes, but is not limited to:

- a. Infections;
- b. Sepsis; and
- c. Death.

34. All of the above identified injuries, as well as the conduct specified below, caused Patricia Brown to lose her personal dignity and extreme and unnecessary pain, degradation, anguish, and emotional trauma.

35. The wrongs complained of herein were of a continuing nature, and occurred throughout Patricia Brown's residency at Defendants' facility.

36. While Plaintiff is alleging the medical care provided Patricia Brown fell below the standard of care and caused her injury, the majority of Plaintiff's allegations are in regard to the provision or lack thereof of personal care services as defined by [R.C. § 3721.01](#) or corporate administrative decisions made by entities that are not health care providers. The above identified injuries resulting from the conduct specified below were a result of the provision or lack thereof of personal care services to Patricia Brown or corporate administrative decisions.

37. Defendants were aware of the systemic staffing problems at Arbors at Dayton throughout the residency of Patricia Brown via Summary Labor Reports which were available at all levels of Defendants' corporate structure, these staffing failures directly impacted the care to the residents, including Patricia Brown.

38. Defendants were aware of the systemic problems within Arbors at Dayton relating to resident care, specifically including: falls, pressure sores, weight loss, dehydration, contractures, use of psychotropic medications, and restraints. These care based indicators were specifically selected after extensive research as indicators of the quality of care being provided to the residents including Patricia Brown. These quality indicators were monitored and available to the Defendants via monthly if not weekly reports.

39. Defendants' upper level management conducted regular meetings for its different areas of operations including Ohio. These meetings kept all Defendants informed of the systemic problems at Arbors at Dayton and the other facilities in Ohio.

40. Plaintiff alleges that on all of the occasions complained of herein, Patricia Brown was under the care, supervision, and treatment of the agents and/or employees of Defendants and that the injuries complained of herein were proximately caused by the acts and omissions of Defendants named herein.

41. Defendants had vicarious liability for the acts and omissions of all persons or entities under Defendants' control, either directly or indirectly, including its employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools causing or contributing to the injuries of Patricia Brown.

42. The Defendants are directly liable for the acts and/or omissions contained herein due to the direct control, ownership, and/or management of the operations of Arbors at Dayton. This exertion of control, ownership, and/or management by the Defendants created a dangerous environment, for all residents, including Patricia Brown.

43. The Defendants were aware of the dangerous environment that was created by their methods of management and/or control at all their facilities, including Arbors at Dayton and the harm caused to the residents, including Patricia Brown.

44. This methodology of management and/or control was set out in the Corporate Plan created and/or implemented by Mel Rhineland, Timothy Lukenda, Douglas Harris, Roch Carter, and other executives of Extendicare, Inc.

45. Defendants have joint and several liability for the actions complained of herein because they consciously and deliberately pursued a common plan or design to commit the tortious acts described in this Complaint and these Defendants actively took part in such actions.

COUNT ONE: CORPORATE NEGLIGENCE AGAINST NURSING HOME DEFENDANTS; JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10 (For Non-lethal Injuries)

46. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

47. Nursing Home Defendants owed a duty to residents, including Patricia Brown, to act in a manner consistent with the proper operation of the nursing homes they controlled, which a reasonably careful person/corporation would provide under similar circumstances.

48. Nursing Home Defendants' employees owed a duty to residents, including Patricia Brown, to exercise reasonable care in providing oversight and management of the nursing homes they owned, operated, managed, and/or controlled.

49. Nursing Home Defendants breached this duty by failing to properly manage, operate, and/or control these nursing homes, including Arbors at Dayton, in a manner that a reasonably careful person/corporation would have provided under similar circumstances and by failing to properly allocate resources, provide appropriate policies and procedures, take appropriate corrective action when operational problems are brought to their attention, intentionally concealing the severity and existence of these failures from affected residents, intentionally concealing the severity and existence of these failures from the State and Federal Government.

50. The negligence of the Nursing Home Defendants, their employees, agents and consultants, includes, but is not limited to, one or more of the following acts and omissions:

a. Staffing

i. Nursing home residents, including Patricia Brown, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

ii. The Corporate Defendants are responsible and required to provide sufficient resources to hire and maintain sufficient staff to ensure that these residents' needs are met.

iii. Additionally, when the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

iv. When the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, those who are present must take shortcuts with respect to all aspects of their job and are unable to do their job.

v. Rather than hiring and maintaining sufficient staff, Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nursing assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by these Corporate Defendants was too low, or such other reasons as will be proven at trial of this matter.

b. Corporate Defendants failed to implement adequate guidelines, policies and procedures for:

i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Dayton by any state or federal survey agency;

ii. Determining the cause of any such deficiencies, violations or penalties; and

iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Dayton;

iv. Notifying residents affected by and those potentially affected by deficiencies cited by any state or federal survey agency.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Dayton had sufficient numbers of nursing personnel to:

i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;

ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

d. Corporate Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Dayton for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Arbors at Dayton regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and **neglect** to residents of the facility, including Patricia Brown.

e. Budgeting or Allocation of Resources

i. Corporate Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.

ii. Corporate Defendants were required to administer Arbors at Dayton in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iii. Corporate Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Corporate Defendants failed to properly allocate the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each residents, including Patricia Brown, and

2. Supplies and food were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Patricia Brown.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Corporate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Corporate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Patricia Brown.

f. Corporate Compliance and Reporting

i. Corporate Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. Corporate Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Patricia Brown.

iii. Upon information and belief, Plaintiff alleges that Corporate Defendants failed to properly recognize and report instances of noncompliance occurring at Arbors at Dayton, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Patricia Brown to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Patricia Brown.

iv. Corporate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Corporate Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Patricia Brown.

51. A reasonably careful Corporation, operating under similar circumstances, would foresee that the failure to provide the appropriate oversight, management, direction, and/or control would result in poorly operated nursing homes such as Arbors at Dayton and devastating injuries to residents including Patricia Brown.

52. As a direct and proximate result of the negligence of Nursing Home Defendants as set out above, Patricia Brown suffered injuries, including infections, sepsis, and extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Patricia Brown to incur significant hospital and medical expenses.

53. WHEREFORE, based on such conduct of Nursing Home Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Nursing Home Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT TWO: CORPORATE NEGLIGENCE AGAINST NURSING HOME DEFENDANTS; JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10 (For Lethal Injuries)

54. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

55. Nursing Home Defendants owed a duty to residents, including Patricia Brown, to act in a manner consistent with the proper operation of the nursing homes they controlled, which a reasonably careful person/corporation would provide under similar circumstances.

56. Nursing Home Defendants' employees owed a duty to residents, including Patricia Brown, to exercise reasonable care in providing oversight and management of the nursing homes they owned, operated, managed, and/or controlled.

57. Nursing Home Defendants breached this duty by failing to properly manage, operate, and/or control these nursing homes, including Arbors at Dayton, in a manner that a reasonably careful person/corporation would have provided under similar circumstances and by failing to properly allocate resources, provide appropriate policies and procedures, take appropriate corrective action when operational problems are brought to their attention, intentionally concealing the severity and existence of these failures from affected residents, intentionally concealing the severity and existence of these failures from the State and Federal Government.

58. The negligence of the Nursing Home Defendants, their employees, agents and consultants, includes, but is not limited to, one or more of the following acts and omissions:

a. Staffing

i. Nursing home residents, including Patricia Brown, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

ii. The Corporate Defendants are responsible and required to provide sufficient resources to hire and maintain sufficient staff to ensure that these residents' needs are met.

iii. Additionally, when the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

iv. When the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, those who are present must take shortcuts with respect to all aspects of their job and are unable to do their job.

v. Rather than hiring and maintaining sufficient staff, Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nursing assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by these Corporate Defendants was too low, or such other reasons as will be proven at trial of this matter.

b. Corporate Defendants failed to implement adequate guidelines, policies and procedures for:

i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Dayton by any state or federal survey agency;

ii. Determining the cause of any such deficiencies, violations or penalties; and

iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Dayton;

iv. Notifying residents affected by and those potentially affected by deficiencies cited by any state or federal survey agency.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Dayton had sufficient numbers of nursing personnel to:

i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;

ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

d. Corporate Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Dayton for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Arbors at Dayton regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and **neglect** to residents of the facility, including Patricia Brown.

e. Budgeting or Allocation of Resources

i. Corporate Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.

ii. Corporate Defendants were required to administer Arbors at Dayton in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ii. Corporate Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Corporate Defendants failed to properly allocate the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each residents, including Patricia Brown, and

2. Supplies and food were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Patricia Brown.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Corporate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Corporate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Patricia Brown.

f. Corporate Compliance and Reporting

i. Corporate Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. Corporate Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Patricia Brown.

iii. Upon information and belief, Plaintiff alleges that Corporate Defendants failed to properly recognize and report instances of noncompliance occurring at Arbors at Dayton, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Patricia Brown to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Patricia Brown.

iv. Corporate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Corporate Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Patricia Brown.

59. A reasonably careful Corporation, operating under similar circumstances, would foresee that the failure to provide the appropriate oversight, management, direction, and/or control would result in poorly operated nursing homes such as Arbors at Dayton and devastating injuries to residents including Patricia Brown.

60. As a direct and proximate result of the negligence of Nursing Home Defendants as set out above, Patricia Brown suffered injuries, including but not limited to infection, sepsis, extreme pain, suffering, mental anguish, embarrassment, fright and death

all of which required hospitalization and medical treatment, and required Patricia Brown to incur significant hospital and medical expenses.

61. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants based on the damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Patricia Brown, including but not limited to sorrow, mental anguish, solace, society, companionship, comfort, guidance, kindly offices, advice, services, protection, care, and assistance, in an amount to be determined by the jury, plus expenses for the care, treatment, hospitalizations, and reasonable funeral expenses and all other relief to which Plaintiff asserts are entitled by law.

**COUNT THREE: NEGLIGENCE CLAIM AGAINST
ADMINISTRATOR DEFENDANTS, AND JOHN DOES 1 THROUGH 10**

62. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

63. Upon information and belief, Administrator Defendants, John Does 1 through 10, were the administrators of Arbors at Dayton during the residency of Patricia Brown. To the extent the names of the licensed administrators who may have managed this facility during the residency of Patricia Brown are determined, all of the following acts are properly attributed to them and Plaintiff will seek leave to substitute these individuals as proper party Defendants.

64. As nursing home administrators, Administrator Defendants owed a common law duty to act as reasonably prudent nursing home administrators and to prevent all reasonably foreseeable injuries to the residents of [Arbors at Dayton](#). 65. As nursing home administrators, Administrator Defendants owed a common law duty to remain informed as to events occurring at Arbors at Dayton through contact with the various departments that they managed, including, but not limited to, nursing, dietary, therapy, housekeeping, social services, and maintenance. Administrator Defendants were required under law to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury, abuse or **neglect** to residents of the home.

66. When Administrator Defendants accepted the position of administrator of Arbors at Dayton they assumed the duties as set forth in the preceding paragraphs.

67. It is reasonably foreseeable that injuries, abuse and **neglect** to residents of Arbors at Dayton, including Patricia Brown, would occur as a direct result of Administrator Defendants' failures to carry out their duties as administrators of the facility.

68. As nursing home administrators, Administrator Defendants were centrally involved and actively participated in tortious conduct that directly caused or contributed to the injuries of Patricia Brown. The following areas describe with specificity the wrongdoings of Administrator Defendants that resulted in harm to Patricia Brown:

a. Staffing

i. Nursing home residents, including Patricia Brown, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

ii. The administrator is responsible and required to hire and maintain sufficient staff to ensure that these residents' needs are met. Further, the administrator must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

iii. When the administrator, as here, fails to hire and maintain sufficient staff and fails to maintain proper working relationships between the departments of the facility, the residents do not receive adequate and appropriate care.

iv. Additionally, when the administrator fails to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

v. When the administrator fails to hire and maintain sufficient staff, those who are present must take shortcuts with respect to the care provided and are unable to provide adequate and appropriate care to the residents of the facility.

vi. Rather than hiring and maintaining sufficient staff Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by the nursing home with the input of the administrator was too low, or such other reasons as will be proven at trial of this matter.

vii. Separate Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Patricia Brown was injured through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

viii. Due to staff shortages at Arbors at Dayton, Patricia Brown's medical records were not kept and maintained in accordance with accepted professional standards and practices. This incomplete documentation resulted in further injuries to Patricia Brown—the facility was unable to properly understand her condition, changes that occurred in her condition, and whether or not her care plan and dietary assessments were properly modified to address changes in her condition.

ix. Separate Defendants owed a non-delegable duty to Patricia Brown and other residents of Arbors at Dayton, during their tenure as administrators, to ensure adequate and appropriate custodial care and supervision through their control over staffing issues. A reasonably prudent nursing home administrator would have known or should have known that injuries would occur to residents such as Patricia Brown if staffing levels were not maintained within reasonable parameters.

x. With respect to staffing, the failures of Separate Defendants include but are not limited to:

1. Ensuring that the staff provided Patricia Brown adequate hygiene and sanitary care;
2. Ensuring that the staff provided Patricia Brown clean bed linens to prevent urine and fecal contact for extended periods of time;
3. Providing sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Patricia Brown throughout her residency;
4. Ensuring that Patricia Brown:
 - a. Received timely and accurate care assessments;
 - b. Received prescribed treatment, medication and diet; and
 - c. Was protected from accidental or intentional injuries by the correct use of ordered and reasonable safety measures and proper supervision of staff and other residents;
5. Keeping Patricia Brown clean and comfortable and to prevent the formation of bedsores, ulcers and lesions on her body;
6. Providing a safe environment free from preventable abuse and **neglect**;

7. Ensuring that Patricia Brown received care, treatment and medication in accordance with physician's orders; and
8. Ensuring that Patricia Brown was provided with the dignity and respect that all nursing home residents are entitled to receive.
- xi. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Arbors at Dayton;
- xii. Terminating employees at Arbors at Dayton that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the State of Ohio;
- xiii. Assigning nursing personnel at Arbors at Dayton consistent with their education and experience and based on:
 1. Patricia Brown's medical history and condition, nursing and rehabilitative needs;
 2. The characteristics of the resident population residing in the area of the facility where Patricia Brown was a resident; and
 3. Nursing skills needed to provide care to such resident population.
- b. Separate Defendants failed to implement adequate guidelines, policies and procedures for:
 - i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Dayton by any state or federal survey agency;
 - ii. Determining the cause of any such deficiencies, violations or penalties; and
 - iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Dayton.
- c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Dayton had sufficient numbers of nursing personnel to:
 - i. Provide 24-hour nursing services;
 - ii. Meet the needs of residents who reside at the facility, including Patricia Brown; and
 - iii. Meet the total nursing needs of residents, including their activities of daily living.
- d. Separate Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Dayton for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at Arbors at Dayton regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and **neglect** to residents of the facility, including Patricia Brown.
- e. Separate Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at Arbors at Dayton.

f. Separate Defendants failed to ensure that Patricia Brown attained and maintained her highest level of physical, mental and psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Patricia Brown.

g. Budgeting or Allocation of Resources

i. As administrators, Separate Defendants were responsible for providing accurate information regarding the monetary needs of the facility to the owners of the nursing home so that a workable budget could be set

ii. As administrators, Separate Defendants were required to administer Arbors at Dayton in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

iii. As administrators, Separate Defendants were responsible for allocating funds within the budget provided them by the owners of the nursing home in a manner that ensured that the needs of the residents, including Patricia Brown, were met.

iv. Separate Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for the proper care of its residents, resulting in the following:

1. Staffing levels that were insufficient to attain or maintain the highest practicable physical, mental and psychosocial well-being of each residents, including Patricia Brown, and

2. Shortages of supplies and food necessary to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Patricia Brown.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Patricia Brown.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Separate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Separate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of providing adequate and appropriate care to the residents.

h. Corporate Compliance and Reporting

i. As administrators of Arbors at Dayton, Separate Defendants were responsible for ensuring that the facility complied with state and federal standards in providing care to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. As administrators, Separate Defendants were charged with the responsibility of reporting instances of abuse and **neglect** that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Patricia Brown.

iii. Upon information and belief, Plaintiff alleges that Separate Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors at Dayton, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Patricia Brown to place her in the facility and misled them as to the care she would receive at the facility. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the

deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Patricia Brown.

iv. Separate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that failed to meet required standards. Upon information and belief, Separate Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Patricia Brown's admissions agreement.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Patricia Brown.

69. A reasonably careful nursing home administrator would have foreseen that the failure to provide the ordinary care listed above would result in devastating injuries to Patricia Brown.

70. As a direct and proximate result of these Administrator Defendants' failure to perform the responsibilities as set forth above, Patricia Brown suffered injuries, including infections, sepsis, and death and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and all of which required Patricia Brown to incur significant hospital and medical expenses.

71. WHEREFORE, based on such conduct of Administrator Defendants as set out above, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Administrator Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT FOUR: NURSING HOME VIOLATIONS AGAINST NURSING HOME DEFENDANTS; JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10 (For Non-lethal Injuries)

72. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

73. Nursing Home Defendants owed a duty to residents, including Patricia Brown, to comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, and shall be liable to the resident for injuries suffered.

74. Nursing Home Defendants' employees owed a duty to residents, including Patricia Brown, to comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation.

75. Nursing Home Defendants breached this duty by depriving residents including Patricia Brown of rights and benefits created or established for the well-being of the residents by the terms of applicable contracts, by any state statutes and rules, and by applicable federal statutes and regulations and by failing to prevent the mistreatment, abuse and **neglect** of Patricia Brown.

76. These breaches were due to the use of improper management styles and systems that were enacted and implemented by the Nursing Home Defendants without consideration of the impact that such improper management styles and systems would have on the residents including Patricia Brown.

77. Nursing Home Defendants were centrally involved and actively participated in tortious conduct that directly caused and/or contributed to the injuries of Patricia Brown. The following areas describe with specificity the wrongdoings and/or negligent actions of the Nursing Home Defendants that resulted in harm to Patricia Brown:

a. Staffing

i. Nursing home residents, including Patricia Brown, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ii. The Nursing Home Defendants are responsible and required to hire and maintain sufficient staff to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, the Nursing Home Defendants must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

iii. When the Nursing Home Defendants, as here, fail to hire and maintain sufficient staff and fail to maintain proper working relationships between the departments of the facility, the Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Additionally, when the Nursing Home Defendants fail to hire and maintain sufficient staff, the staff who are present are unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through no fault of their own.

v. When the Nursing Home Defendants fail to hire and maintain sufficient staff, those who are present must take shortcuts with respect to compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations and were unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. Rather than hiring and maintaining sufficient staff, Nursing Home Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, or because of deplorable working conditions, or because the pay set by the Nursing Home Defendants was too low, or such other reasons as will be proven at trial of this matter.

vii. Nursing Home Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

viii. Due to staff shortages at Arbors at Dayton, Patricia Brown's medical records were not kept and maintained in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ix. Nursing Home Defendants owed a non-delegable duty to Patricia Brown and other residents of Arbors at Dayton, to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their control over staffing issues. A reasonably prudent nursing home operator would have known or should have known that injuries would occur to residents such as Patricia Brown if staffing levels were not maintained within reasonable parameters and comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

x. Ensuring that Patricia Brown was provided with the dignity and respect that all nursing home residents are entitled to receive;

xi. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Arbors at Dayton;

xii. Terminating employees at Arbors at Dayton that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the State of Ohio;

b. Nursing Home Defendants failed to implement adequate guidelines, policies and procedures for:

i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Dayton by any state or federal survey agency;

ii. Determining the cause of any such deficiencies, violations or penalties; and

iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Dayton.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Dayton had sufficient numbers of nursing personnel to:

i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;

ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

d. Nursing Home Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Dayton for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Arbors at Dayton regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and **neglect** to residents of the facility, including Patricia Brown.

e. Nursing Home Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations at Arbors at Dayton.

f. Nursing Home Defendants failed to ensure that Patricia Brown attained and maintained her highest level of psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Patricia Brown.

g. Budgeting or Allocation of Resources

i. Nursing Home Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.

ii. Nursing Home Defendants were required to administer Arbors at Dayton in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iii. Nursing Home Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Nursing Home Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each residents, including Patricia Brown, and

2. Shortages of supplies and food necessary to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Patricia Brown.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Nursing Home Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Nursing Home Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-atient oriented and to items and services that were unnecessar to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Patricia Brown.

h. Corporate Compliance and Reporting

i. Nursing Home Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. Nursing Home Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Patricia Brown.

iii. Upon information and belief, Plaintiff alleges that Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors at Dayton, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Patricia Brown to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Patricia Brown.

iv. Nursing Home Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Nursing Home Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Patricia Brown's admissions agreement.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Patricia Brown.

78.A reasonably careful nursing home, operating under similar circumstances, would foresee that the failure to comply with Ohio resident's rights would result in devastating injuries to Patricia Brown.

79. As a direct and proximate result of the Nursing Home Defendants' failures as set out above, Patricia Brown suffered injuries, including infections, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Patricia Brown to incur significant hospital and medical expenses.

80. WHEREFORE, based on such conduct of Nursing Home Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages, punitive damages and injunctive relief against Nursing Home Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT FIVE: NURSING HOME VIOLATIONS AGAINST NURSING HOME DEFENDANTS;
JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10 (For Lethal Injuries)**

81. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

82. Nursing Home Defendants owed a duty to residents, including Patricia Brown, comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, and shall be liable to the resident for injuries suffered.

83. Nursing Home Defendants' employees owed a duty to residents, including Patricia Brown, to comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation.

84. Nursing Home Defendants breached this duty by depriving residents including Patricia Brown of rights and benefits created or established for the well-being of the residents by the terms of applicable contracts, by any state statutes and rules, and by applicable federal statutes and regulations and by failing to prevent the mistreatment, abuse and **neglect** of Patricia Brown.

85. These breaches were due to the use of improper management styles and systems that were enacted and implemented by the Nursing Home Defendants without consideration of the impact that such improper management styles and systems would have on the residents including Patricia Brown.

86. Nursing Home Defendants were centrally involved and actively participated in tortious conduct that directly caused and/or contributed to the injuries of Patricia Brown. The following areas describe with specificity the wrongdoings and/or negligent actions of the Nursing Home Defendants that resulted in harm to Patricia Brown:

a. Staffing

i. Nursing home residents, including Patricia Brown, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ii. The Nursing Home Defendants are responsible and required to hire and maintain sufficient staff to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, the Nursing Home Defendants must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

iii. When the Nursing Home Defendants, as here, fail to hire and maintain sufficient staff and fail to maintain proper working relationships between the departments of the facility, the Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Additionally, when the Nursing Home Defendants fail to hire and maintain sufficient staff, the staff who are present are unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through no fault of their own.

v. When the Nursing Home Defendants fail to hire and maintain sufficient staff, those who are present must take shortcuts with respect to compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations and were unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. Rather than hiring and maintaining sufficient staff, Nursing Home Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, or because of deplorable working conditions, or because the pay set by the Nursing Home Defendants was too low, or such other reasons as will be proven at trial of this matter.

vii. Nursing Home Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

viii. Due to staff shortages at Arbors at Dayton, Patricia Brown's medical records were not kept and maintained in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ix. Nursing Home Defendants owed a non-delegable duty to Patricia Brown and other residents of Arbors at Dayton, to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their control over staffing issues. A reasonably prudent nursing home operator would have known or should have known that injuries would occur to residents such as Patricia Brown if staffing levels were not maintained within reasonable parameters and comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

x. Ensuring that Patricia Brown was provided with the dignity and respect that all nursing home residents are entitled to receive;

xi. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Arbors at Dayton;

xii. Terminating employees at Arbors at Dayton that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the State of Ohio;

b. Nursing Home Defendants failed to implement adequate guidelines, policies and procedures for:

i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Dayton by any state or federal survey agency;

ii. Determining the cause of any such deficiencies, violations or penalties; and

iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Dayton.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Dayton had sufficient numbers of nursing personnel to:

- i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;
- ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

d. Nursing Home Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Dayton for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Arbors at Dayton regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and **neglect** to residents of the facility, including Patricia Brown.

e. Nursing Home Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations at Arbors at Dayton.

f. Nursing Home Defendants failed to ensure that Patricia Brown attained and maintained her highest level of psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Patricia Brown.

g. Budgeting or Allocation of Resources

i. Nursing Home Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.

ii. Nursing Home Defendants were required to administer Arbors at Dayton in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iii. Nursing Home Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Nursing Home Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each residents, including Patricia Brown, and

2. Shortages of supplies and food necessary to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Patricia Brown.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Nursing Home Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Nursing Home Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Patricia Brown.

h. Corporate Compliance and Reporting

i. Nursing Home Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. Nursing Home Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Patricia Brown.

iii. Upon information and belief, Plaintiff alleges that Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors at Dayton, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Patricia Brown to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Patricia Brown.

iv. Nursing Home Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable

federal statutes or regulations. Upon information and belief, Nursing Home Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Patricia Brown's admissions agreement.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Patricia Brown.

87. A reasonably careful nursing home, operating under similar circumstances, would foresee that the failure to comply with Ohio's resident's rights would result in devastating injuries to Patricia Brown.

88. As a direct and proximate result of the Nursing Home Defendants' failures as set out above, Patricia Brown suffered injuries, including infections, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, fright and death all of which required hospitalization and medical treatment, and required Patricia Brown to incur significant hospital and medical expenses.

89. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants based on the damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Patricia Brown, including but not limited to sorrow, mental anguish, solace, society, companionship, comfort, guidance, kindly offices, advice, services, protection, care, and assistance, in an amount to be determined by the jury, plus expenses for the care, treatment, hospitalizations, and reasonable funeral expenses and all other relief to which Plaintiff asserts are entitled by law.

COUNT SIX: MEDICAL MALPRACTICE AGAINST NURSING HOME DEFENDANTS; JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10 (For Non-lethal Injuries)

90. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

91. Separate Defendants owed a duty to residents, including Patricia Brown, to hire, train, and supervise employees so that such employees delivered care and services to residents in a safe and beneficial manner.

92. Separate Defendants' employees owed a duty to residents, including Patricia Brown, to render care and services as a reasonably prudent and similarly situated nursing home employee would render, including, but not limited to, rendering care and services in a safe and beneficial manner.

93. Separate Defendants owed a duty to assist all residents, including Patricia Brown in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

94. Defendants failed to meet the standard of care and violated its duty of care to Patricia Brown through mistreatment, abuse and **neglect**. The negligence of Defendants, their employees, and consultants, includes, but is not limited to, one or more of the following acts and omissions:

- a. The failure to properly notify a doctor upon significant changes in Patricia Brown's condition;
- b. The failure to respond to significant signs and symptoms of change in the condition of Patricia Brown;
- c. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Patricia Brown;
- d. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Patricia Brown condition;
- e. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Patricia Brown;
- f. The failure to increase the number of nursing personnel to ensure that Patricia Brown:
 - i. received timely and accurate care assessments;
 - ii. received prescribed treatment, medication, and diet;
 - iii. received necessary supervision; and
 - iv. received timely nursing and medical intervention due to a significant change in condition.
- g. The failure to provide nursing personnel sufficient in number to ensure that Patricia Brown attained and maintained her highest level of physical, mental and psychosocial well-being;
- h. The failure to provide adequate supervision to the nursing staff so as to ensure that Patricia Brown received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments, medications, and skin care to prevent the formation of pressure sores, to prevent infection, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Patricia Brown;
- i. The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure the Patricia Brown received appropriate nursing care, in accordance with Defendants' policy and procedures manual, and the statutorily mandated regulations implemented by any state or federal agency;

- j. The failure to provide a nursing staff that was properly staffed, qualified, and trained;
 - k. The failure to provide and ensure an adequate nursing care plan based on the needs of Patricia Brown;
 - l. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Patricia Brown changed;
 - m. The failure to implement and ensure that an adequate nursing care plan for Patricia Brown was followed by nursing personnel;
 - n. The failure to adopt adequate guidelines, policies, and procedures for documenting, maintaining files, investigating, and responding to any complaint regarding the quantity of resident care, the quality of resident care, or misconduct by employees, irrespective of whether such complaint derived from a state survey agency, a resident of said facility, an employee of the facility or any interested person;
 - o. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
 - p. The failure to provide Patricia Brown with adequate and appropriate care so as to prevent the development, aggravation and progression of infection;
 - q. The failure to provide Patricia Brown with adequate and appropriate observation and examination so as to timely and adequately intervene to prevent the development, aggravation and progression of infection;
 - r. The failure to provide Patricia Brown with adequate and appropriate nursing care, treatments and medication for infection after the development of infection in the body of Patricia Brown;
 - s. The failure to provide care, treatment, and medication in accordance with physician's orders;
 - t. The failure to provide Patricia Brown with adequate and appropriate assessment for fluid management to prevent dehydration;
 - u. The failure to maintain an adequate and appropriate fluid maintenance program;
 - v. The failure to ensure that Patricia Brown received adequate assessment of her nutritional needs;
 - w. The failure to maintain medical records on Patricia Brown in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 - i. the diagnosis of Patricia Brown;
 - ii. the treatment of Patricia Brown; and
 - iii. the assessment and establishment of appropriate plans of care and treatment.
 - x. The failure to adequately and appropriately monitor Patricia Brown and recognize significant changes in her health status; and
95. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed in the above complaint. Each of the foregoing acts of negligence on the part of Defendants was a proximate cause of Patricia Brown's injuries. Patricia Brown's injuries were all foreseeable to Defendants.

96. Defendants' conduct in breaching the duties owed to Patricia Brown was negligent, grossly negligent, willful, wanton, malicious and reckless.

97. As a direct and proximate result of such negligent, grossly negligent, willful, wanton, reckless and malicious conduct, Patricia Brown suffered injuries, including infections, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Patricia Brown to incur significant hospital and medical expenses.

98. WHEREFORE, based on such conduct of Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT SEVEN: MEDICAL MALPRACTICE AGAINST NURSING HOME DEFENDANTS; JOHN
DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10 (For Lethal Injuries)**

99. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

100. Separate Defendants owed a duty to residents, including Patricia Brown, to hire, train, and supervise employees so that such employees delivered care and services to residents in a safe and beneficial manner.

101. Separate Defendants' employees owed a duty to residents, including Patricia Brown, to render care and services as a reasonably prudent and similarly situated nursing home employee would render, including, but not limited to, rendering care and services in a safe and beneficial manner.

102. Separate Defendants owed a duty to assist all residents, including Patricia Brown in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

103. Defendants failed to meet the standard of care and violated its duty of care to Patricia Brown through mistreatment, abuse and **neglect**. The negligence of Defendants, their employees, and consultants, includes, but is not limited to, one or more of the following acts and omissions:

- a. The failure to properly notify a doctor upon significant changes in Patricia Brown's condition;
- b. The failure to respond to significant signs and symptoms of change in the condition of Patricia Brown;
- c. The failure to adequately and timely assess, monitor and/or treat the development and progression of pressure sores and infection in Patricia Brown;
- d. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Patricia Brown;
- e. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Patricia Brown's condition;
- f. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Patricia Brown;
- g. The failure to increase the number of nursing personnel to ensure that Patricia Brown:

- i. received timely and accurate care assessments;
 - ii. received prescribed treatment, medication, and diet;
 - iii. received necessary supervision; and
 - iv. received timely nursing and medical intervention due to a significant change in condition.
- h. The failure to provide nursing personnel sufficient in number to ensure that Patricia Brown attained and maintained her highest level of physical, mental and psychosocial well-being;
- i. The failure to provide adequate supervision to the nursing staff so as to ensure that Patricia Brown received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments, medications, and skin care to prevent the formation of pressure sores, to prevent infection, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Patricia Brown;
- j. The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure the Patricia Brown received appropriate nursing care, in accordance with Defendants' policy and procedures manual, and the statutorily mandated regulations implemented by any state or federal agency;
- k. The failure to provide a nursing staff that was properly staffed, qualified, and trained;
- I. The failure to provide and ensure an adequate nursing care plan based on the needs of Patricia Brown;
- m. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Patricia Brown changed;
- n. The failure to implement and ensure that an adequate nursing care plan for Patricia Brown was followed by nursing personnel;
- o. The failure to adopt adequate guidelines, policies, and procedures for documenting, maintaining files, investigating, and responding to any complaint regarding the quantity of resident care, the quality of resident care, or misconduct by employees, irrespective of whether such complaint derived from a state survey agency, a resident of said facility, an employee of the facility or any interested person;
- p. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- q. The failure to provide Patricia Brown with adequate and appropriate care so as to prevent the development, aggravation and progression of infection;
- r. The failure to provide Patricia Brown with adequate and appropriate observation and examination so as to timely and adequately intervene to prevent the development, aggravation and progression of infection;
- s. The failure to provide Patricia Brown with adequate and appropriate nursing care, treatments and medication for infection after the development of infection in the body of Patricia Brown;
- t. The failure to provide care, treatment, and medication in accordance with physician's orders;
- u. The failure to provide Patricia Brown with adequate and appropriate assessment for fluid management to prevent dehydration;

- v. The failure to maintain an adequate and appropriate fluid maintenance program;
- w. The failure to ensure that Patricia Brown received adequate assessment of her nutritional needs;
- x. The failure to maintain medical records on Patricia Brown in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 - i. the diagnosis of Patricia Brown;
 - ii. the treatment of Patricia Brown; and
 - iii. the assessment and establishment of appropriate plans of care and treatment.
- y. The failure to adequately and appropriately monitor Patricia Brown and recognize significant changes in her health status.

104. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed in the above complaint. Each of the foregoing acts of negligence on the part of Defendants was a proximate cause of Patricia Brown's injuries. Patricia Brown's injuries were all foreseeable to Defendants.

105. Defendants' conduct in breaching the duties owed to Patricia Brown was negligent, grossly negligent, willful, wanton, malicious and reckless.

106. As a direct and proximate result of such negligent, grossly negligent, willful, wanton, reckless and malicious conduct, Patricia Brown suffered injuries, including infections, sepsis, extreme pain, suffering, mental anguish, embarrassment, fright and death all of which required hospitalization and medical treatment, and required Patricia Brown to incur significant hospital and medical expenses.

107. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants based on the damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Patricia Brown, including but not limited to sorrow, mental anguish, solace, society, companionship, comfort, guidance, kindly offices, advice, services, protection, care, and assistance, in an amount to be determined by the jury, plus expenses for the care, treatment, hospitalizations, and reasonable funeral expenses and all other relief to which Plaintiff asserts are entitled by law.

COUNT EIGHT: MALICE, AND/OR GROSS NEGLIGENCE WHICH EVIDENCES A WILLFUL, WANTON, OR RECKLESS DISREGARD FOR THE SAFETY OF PATRICIA BROWN AGAINST ALL DEFENDANTS

108. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

109. The longevity, scope and severity of Defendants' failures and actions as heretofore described constitute malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Patricia Brown. Specifically, such conduct was undertaken by Defendants without regard to the health and safety consequences to those residents, such as Patricia Brown, entrusted to their care. Moreover, such conduct evidences such little regard for their duties of care, good faith, and fidelity owed to Patricia Brown.

110. The malice, and/or gross negligence which evidence a willful, wanton or reckless disregard for the safety of others, including Patricia Brown includes, but is not limited to, one or more of the acts and/or omissions as alleged in other paragraphs contained herein.

111. As a direct and proximate result of the above cited malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Patricia Brown, she suffered injuries, including infections, sepsis, and death and also suffered extreme pain, suffering, mental anguish, embarrassment, disfigurement, and fright, all of which required hospitalization and medical treatment, and all of which required Patricia Brown to incur significant hospital and medical expenses.

112. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiffs are entitled to and therefore assert a claim for punitive damages in an amount sufficient to punish and deter Defendants and others like them from such conduct in the future.

**COUNT NINE: FRAUD AGAINST NURSING HOME DEFENDANTS; JOHN
DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10**

113. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

114. On or about April 2013, Patricia Brown was admitted to Arbors at Dayton, a nursing home owned and operated by the Defendants. Based on information and belief during this admission process of Patricia Brown, Nursing Home Defendants made specific representations by and through their agent that would provide Patricia Brown with the care and treatment that she required based on her needs.

115. During the admission process the Nursing Home Defendants made specific representations to Patricia Brown and her family via the admission agreement that is required by law. This admission agreement sets out that the facility “will furnish general nursing care, personal assessment, social services, and such other personal services as may be required pursuant to the plan of care prepared by the Resident's physician” and the facility. While Plaintiff does not specifically recall by name who explained and went over the admission information it is clear under current rules and regulations that the Defendants were obligated to perform the above referenced acts. Nursing Home Defendants knew or should have known at the time Patricia Brown was admitted that based on past experiences with other residents, communication with current and former employees, State and Federal Surveys, and multiple lawsuits alleging resident **neglect** that they would not be able to meet the needs of Patricia Brown or provide the level of care required pursuant to the plan of care prepared for Patricia Brown.

116. Additionally, during this admission process which occurred on or about April 2013, the Nursing Home Defendants were required to provide specific information to Patricia Brown and her family as indicated in the admission agreement. Said information included “The Resident Handbook” and “Resident/Patient Rights” which contain additional representations made to Patricia Brown and her family as to the quality and quantity of services that would be provided to Patricia Brown during her residency.

117. Defendants, while claiming and/or implying special knowledge and holding themselves out as being a properly operated nursing home, concealed and misrepresented material facts from/to Patricia Brown and her family. Nursing Home Defendants specifically misrepresented that they could and would provide twenty four hour a day nursing care and supervision to Patricia Brown, when, in fact, Defendants knew that they would not do so and they were not sufficiently staffed or supplied to do so.

118. The relationship between Nursing Home Defendants and Patricia Brown and her family was one of trust and confidence, and Defendants had a higher duty to affirmatively speak the truth to Patricia Brown and her family because of Patricia Brown's age and infirmities. Defendants' fraudulent conduct includes, but is not limited to, the conduct described and set forth below.

119. Nursing Home Defendants engaged in intentional fraud by concealing or failing to disclose material facts within Defendants' knowledge, when Defendants knew that Patricia Brown and her family were ignorant of these material facts and did not have an equal opportunity to discover the truth. Specifically, Nursing Home Defendants misrepresented the material fact that they were willing to, and would, provide the proper care, treatment, and services to Patricia Brown, when in fact, Defendants knew that they would provide as little care, treatment, and services as possible in order to maximize Defendants' profits at the expense of Patricia Brown.

120. Further, Defendants intended to induce Patricia Brown and her family to take some action: to wit, to admit and then allow Patricia Brown to remain in Defendants' facility by concealing or failing to disclose the material facts that there was an epidemic of resident harm and injury, as well as a practice of utilizing insufficient numbers of nursing aides who were not qualified to render care or services in accordance with the law. As a proximate cause of the concealment and failure to disclose by Nursing Home Defendants, Patricia Brown and her family suffered injury as described herein.

121. Nursing Home Defendants perpetuated a continued concealment of the truth, throughout the duration of Patricia Brown's residency from on or about April 2013 through her discharge on or about July 30, 2013, related to the adequacy of the staffing and supplies available at the nursing home from which to provide care to Patricia Brown. During the time frame of Patricia Brown's residency the Nursing Home Defendants had information available indicating that they were insufficiently staffed and supplied to provide the care needed to Patricia Brown via:

- a. Summary Labor reports;
- b. Key Factor reports;
- c. Quality Indicator reports;
- d. Trend of Key Items reports;
- e. Budget Variance reports;
- f. Resident Census and Conditions of Residents reports;
- g. State and Federal Surveys;
- h. Labor Turnover reports;
- i. 800 Hotline complaints;
- j. Reports from consultants; and
- k. Lawsuits and Jury awards;

122. Even when these deficiencies were brought to the attention of the Nursing Home Defendants they intentionally decided not to provide this information to Patricia Brown and/or her family. Nursing Home Defendants planned to bury this information and not make any information available to Patricia Brown, her family, any other resident or their families. These Defendants hid material information from residents and their families, including Patricia Brown, which would allow them to make informed decisions about the quality of care being provided to their loved ones including Patricia Brown and her family.

123. The failure to disclose special knowledge of the manner in which the Nursing Home Defendants operated the nursing home was an intentional concealment of the truth by these same Defendants. This intentional concealment by Nursing Home

Defendants was a deliberate nondisclosure designed to prevent Patricia Brown and her family from learning the truth so that she would be admitted to and remain at the facility.

124. Patricia Brown and her family relied on the Nursing Home Defendants as experts in the area of nursing home care and placed their trust and confidence in these same Defendants. Due to the material misrepresentations and continued concealment of the truth related to the quality and quantity of staffing and supplies Patricia Brown suffered damages.

125. As a consequence and as a proximate cause of the reliance on these misrepresentations, Patricia Brown and her family suffered damages and failed to receive the quality and quantity of care that was paid for.

126. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiffs are entitled to and therefore assert a claim for compensatory and punitive damages in an amount sufficient to punish and deter Defendants and others like them from such conduct in the future.

**COUNT TEN: BREACH OF FIDUCIARY DUTY AGAINST NURSING HOME DEFENDANTS;
JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10**

127. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

128. As a resident of Defendants' facility, Patricia Brown was particularly dependent for her daily care and well-being upon Defendants, their employees and agents. Because of the nature of this dependency and the representations of Defendants that they could and would provide necessary care, Patricia Brown and her family held in Defendants a special confidence and trust which Defendants accepted by admitting Patricia Brown to their facility, and by determining the level of care to be provided to Patricia Brown.

129. Patricia Brown and her family relied upon the supposed superior knowledge, skill, and abilities of Defendants that Defendants held themselves out to have. Patricia Brown and her family also relied on Defendants to provide care for Patricia Brown, who, because of her age and infirmities, was not able to care for herself.

130. By virtue of the nature of the services rendered to Patricia Brown by Defendants, and the special relationship which developed between Defendants and Patricia Brown, as well as the huge disparity of power and unequal bargaining position existing between Defendants and Patricia Brown, Defendants occupied a position of confidence toward Patricia Brown which required fidelity, loyalty, good faith, and fair dealing by Defendants.

131. Defendants breached their fiduciary duty and duty of good faith and fair dealing to Patricia Brown by failing to provide the appropriate level of care and services to which Patricia Brown was entitled, by accepting payment for services and care not provided to Patricia Brown, and by their concealment of and failure to disclose Defendants' abuse and **neglect** of Patricia Brown.

132. As a proximate cause of the foregoing breaches of duty by Defendants, Patricia Brown suffered injuries as set forth above.

133. Wherefore, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law. Plaintiff also seeks the imposition of a constructive trust on all wrongful profits and proceeds arising out of Defendants' breach of fiduciary duty to Patricia Brown.

COUNT ELEVEN: PREMISES LIABILITY CLAIM AGAINST ALL DEFENDANTS

134. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

135. Defendants, during the time they owned, operated, managed, and/or controlled Arbors at Dayton, had a duty to warn patrons/residents, including Plaintiff, of dangerous conditions of which Defendants knew existed, or reasonably should have known existed in the exercise of reasonable care, and particularly dangerous conditions that were willfully, wantonly, and/or intentionally created by Defendants, including but not limited to the failure to adequately staff the facility, adequately train the staff, provide adequate support for the staff, adequately budget, fund, or spend sufficient sums to provide adequate and appropriate healthcare to the residents which posed a foreseeable threat to the residents of Arbors at Dayton.

136. Defendants were negligent in failing to warn residents, including the Plaintiff, of known insufficient staffing problems occurring while Defendants owned, operated, managed, and/or controlled Arbors at Dayton.

137. Defendants owed a duty to exercise reasonable care to correct dangerous conditions, including but not limited to the failure to adequately staff the facility, adequately train the staff, provide adequate support for the staff, adequately budget, fund, or spend sufficient sums to provide adequate and appropriate healthcare, for the safety of their residents including Plaintiff.

138. Defendants owed a duty to the residents, including Plaintiff, to provide safe living conditions.

139. Defendants having years of experience owning, operating, and/or managing nursing homes across the country have set in place numerous systems to provide information on occurrences, conditions, and events involving patrons/residents in their nursing homes including Arbors at Dayton, which provided Defendants with the notice and knowledge of the conditions alleged by Plaintiff or reasonably should have placed Defendants on notice of said conditions.

140. The systems and reports available to Defendants include but are not limited to:

- a. Summary Labor reports;
- b. Key Factor reports;
- c. Quality Indicator reports;
- d. Trend of Key Items reports;
- e. Budget Variance reports;
- f. Resident Census and Conditions of Residents reports;
- g. State and Federal Surveys;
- h. Labor Turnover reports;
- i. 800 Hotline complaints;
- j. Reports from consultants;
- k. Lawsuits and Jury awards;
- I. Corporate Integrity Agreement Annual Reports;

141. Defendants were negligent in the following acts and/or omissions which contributed to causing the dangerous conditions complained of:

- a. The failure to provide even the minimum number of staff necessary to assist the residents with their needs;
- b. The failure to protect Patricia Brown from harm within the facility;
- c. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Patricia Brown's condition;
- d. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Patricia Brown;
- e. The failure to provide a nursing personnel that was properly staffed, qualified, and trained;
- f. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- g. The failure to ensure sufficient and appropriate supplies were available to meet the needs of the residents, including Plaintiff; and
- h. The failure to ensure that the facility was properly budgeted to ensure that residents' needs were met.

142. Defendants willfully and wantonly created these dangerous conditions by the methodology of management and/or control that was set out in the Corporate Plan created and/or implemented by Nursing Home Defendants' executives.

143. Not only did Defendants create these dangerous conditions that put Plaintiff and other residents at risk but they attempted to keep this information secreted from the public, their investors, and their residents including but not limited to Plaintiff, by means of an intentional cover-up and inaccurate/incomplete documentation.

144. Defendants failed to warn the residents, including Plaintiff of these dangerous conditions created by Defendants at Arbors at Dayton.

145. As a direct and proximate result of the negligence of Defendants as set out above, Patricia Brown suffered injuries, including infections, sepsis, and death, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Patricia Brown to incur significant hospital and medical expenses.

146. WHEREFORE, based on such conduct of Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, fright and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

PRAYER FOR RELIEF

Pursuant to Ohio Rules of Civil Procedure, Plaintiff asserts demand that all issues of fact in this case be tried by a jury.

WHEREFORE, the Plaintiff, Patricia Brown, prays for judgment against Defendants, as follows:

1. For damages to be determined by the jury, in an amount exceeding the minimum jurisdictional amount of this Court, and adequate to compensate Plaintiff for all the injuries and damage sustained;

2. For all general and special damages caused by the alleged conduct of Defendants;
3. For the costs of litigating this case;
4. For punitive damages sufficient to punish Defendants for their egregious conduct and to deter Defendants from ever repeating such atrocities; and
5. For all other relief to which Plaintiff is entitled by Ohio law.

Respectfully submitted, this the 1st day of October, 2014.

Courtney Brown, Individually and on behalf of the Wrongful Death Beneficiaries of Patricia Brown,

McHUGH FULLER LAW GROUP, PLLC

By: */s/ Michael J Fuller Jr*

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Appendix not available.