

2013 WL 6458343 (Ohio Com.Pl.) (Trial Pleading)
Court of Common Pleas of Ohio.
Montgomery County

Jeffrey HOLLOWAY, 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. 2013CV07295.
November 27, 2013.

Jury Demanded

Complaint

Jeffrey Holloway, 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, Attorneys for Plaintiff.

Plaintiff Jeffrey Holloway for his causes of action against Defendants, states:

JURISDICTIONAL STATEMENT

1. Jeffrey Holloway was, at all times material hereto, a resident of Arbors at Dayton, a skilled nursing facility located at 320 Albany Street, Dayton, OH 45417 from on or about September 2012, through on or about January 2013, and suffered personal injuries and damages while a resident there. He possesses a claim for such personal injuries and damages.
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 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903. The agent for service for 111 West Michigan Street, Milwaukee, Wisconsin 53203-2903 is unknown. 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 of Dayton. Additionally, Extencicare, Inc. was not and has never been "licensed" as an entity entitled to operate Arbors of 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 of 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 of 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 of 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 Homes, 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 of 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 Holdings, Inc. was not and has never been “licensed” as an entity entitled to operate Arbors of 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 of Dayton.

18. Separate 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 Jeffrey Holloway during his 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 Jeffrey Holloway during his 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 Jeffrey Holloway during his 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 Jeffrey Holloway during his 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 Extendicare, Inc., Extendicare Health Services, Inc., Extendicare Health Network, Inc., Extendicare Health Facilities, Inc., Extendicare Homes, Inc., Extendicare 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 Extendicare, Inc., Extendicare Health Services, Inc., Extendicare Health Network, Inc., Extendicare Health Facilities, Inc., Extendicare Homes, Inc., Extendicare 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 Extendicare, Inc., Extendicare Health Services, Inc., Extendicare Health Network, Inc., Extendicare Health Facilities, Inc., Extendicare Homes, Inc., Extendicare 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.

FACTUAL SUMMARY

29. On or about September 2012, Jeffrey Holloway at the age of 53 was admitted to Arbors at Dayton, and he remained a resident of the nursing home until on or about January 2013, as a result of the injuries he suffered at Defendants' facility.

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

31. 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 Jeffrey Holloway and other residents like him; 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.

32. Defendants failed to discharge their obligations of care to Jeffrey Holloway. As a consequence thereof, Jeffrey Holloway suffered catastrophic injuries, extreme pain, suffering, and mental anguish. The scope and severity of the recurrent wrongs inflicted upon Jeffrey Holloway while under the care of the facility accelerated the deterioration of his 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. Weight loss;

b. Poor hygiene;

c. Medication mismanagement;

d. Wounds.

33. All of the above identified injuries, as well as the conduct specified below, caused Jeffrey Holloway to lose his personal dignity and extreme and unnecessary pain, degradation, anguish, and emotional trauma.

34. The wrongs complained of herein were of a continuing nature, and occurred throughout Jeffrey Holloway's residency at Defendants' facility.

35. Defendants were aware of the systemic staffing problems at Arbors of Dayton throughout the residency of Jeffrey Holloway 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 Jeffrey Holloway.

36. Defendants were aware of the systemic problems within Arbors of 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 Jeffrey Holloway. These quality indicators were monitored and available to the Defendants via monthly if not weekly reports.

37. 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 of Dayton and the other facilities in Ohio.

38. Plaintiff alleges that on all of the occasions complained of herein, Jeffrey Holloway 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.

39. 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 Jeffrey Holloway.

40. 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 of Dayton. This exertion of control, ownership, and/or management by the Defendants created a dangerous environment, for all residents, including Jeffrey Holloway.

41. 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 of Dayton and the harm caused to the residents, including Jeffrey Holloway.

42. 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.

43. 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)

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

45. Nursing Home Defendants owed a duty to residents, including Jeffrey Holloway, 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.

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

47. Nursing Home Defendants breached this duty by failing to properly manage, operate, and/or control these nursing homes, including Arbors of 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.

48. 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 Jeffrey Holloway, 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 of 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 of 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 of 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 of 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 of 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 Jeffrey Holloway.

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 of 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 Jeffrey Holloway, 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 Jeffrey Holloway.

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 Jeffrey Holloway.

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 Jeffrey Holloway.

iii. Upon information and belief, Plaintiff alleges that Corporate Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors of 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 Jeffrey Holloway to place him 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 Jeffrey Holloway.

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 Jeffrey Holloway.

49. 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 of Dayton and devastating injuries to residents including Jeffrey Holloway.

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

51. 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: NEGLIGENCE CLAIM AGAINST ADMINISTRATOR
DEFENDANTS, AND JOHN DOES 1 THROUGH 10**

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

53. Upon information and belief, Administrator Defendants, John Does 1 through 10, were the administrators of Arbors of Dayton during the residency of Jeffrey Holloway. To the extent the names of the licensed administrators who may have managed this facility during the residency of Jeffrey Holloway 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.

54. 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 of Dayton.

55. As nursing home administrators, Administrator Defendants owed a common law duty to remain informed as to events occurring at Arbors of 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.

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

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

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

a. Staffing

i. Nursing home residents, including Jeffrey Holloway, 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. Jeffrey Holloway 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 of Dayton, Jeffrey Holloway's medical records were not kept and maintained in accordance with accepted professional standards and practices. This incomplete documentation resulted in further injuries to Jeffrey Holloway —the facility was unable to properly understand his condition, changes that occurred in his condition, and whether or not his care plan and dietary assessments were properly modified to address changes in his condition.

ix. Separate Defendants owed a non-delegable duty to Jeffrey Holloway and other residents of Arbors of 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 Jeffrey Holloway 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 Jeffrey Holloway adequate hygiene and sanitary care;
2. Ensuring that the staff provided Jeffrey Holloway 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 Jeffrey Holloway throughout his residency;
4. Ensuring that Jeffrey Holloway:
 - 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 Jeffrey Holloway clean and comfortable and to prevent the formation of bedsores, ulcers and lesions on his body;
6. Providing a safe environment free from preventable abuse and **neglect**;
7. Ensuring that Jeffrey Holloway received care, treatment and medication in accordance with physician's orders; and

8. Ensuring that Jeffrey Holloway 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 of Dayton;

xii. Terminating employees at Arbors of 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 of Dayton consistent with their education and experience and based on:

1. Jeffrey Holloway's medical history and condition, nursing and rehabilitative needs;

2. The characteristics of the resident population residing in the area of the facility where Jeffrey Holloway 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 of 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 of Dayton.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors of 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 Jeffrey Holloway; 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 of Dayton for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at Arbors of 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 Jeffrey Holloway.

e. Separate Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at Arbors of Dayton.

f. Separate Defendants failed to ensure that Jeffrey Holloway attained and maintained his 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 Jeffrey Holloway.

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 of 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 Jeffrey Holloway, 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 Jeffrey Holloway, 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 Jeffrey Holloway.

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.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Jeffrey Holloway.

h. Corporate Compliance and Reporting

i. As administrators of Arbors of 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 Jeffrey Holloway.

iii. Upon information and belief, Plaintiff alleges that Separate Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors of 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 Jeffrey Holloway to place him in the facility and misled them as to the care he 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 Jeffrey Holloway.

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 Jeffrey Holloway's admissions agreement.

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

59. 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 Jeffrey Holloway.

60. As a direct and proximate result of these Administrator Defendants' failure to perform the responsibilities as set forth above, Jeffrey Holloway suffered injuries, including weight loss, poor hygiene, medication mismanagement, wounds, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and all of which required Jeffrey Holloway to incur significant hospital and medical expenses.

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

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

63. Nursing Home Defendants owed a duty to residents, including Jeffrey Holloway, 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.

64. Nursing Home Defendants' employees owed a duty to residents, including Jeffrey Holloway, 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.

65. Nursing Home Defendants breached this duty by depriving residents including Jeffrey Holloway 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 Jeffrey Holloway.

66. 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 Jeffrey Holloway.

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

a. Staffing

i. Nursing home residents, including Jeffrey Holloway, 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 of Dayton, Jeffrey Holloway'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 Jeffrey Holloway and other residents of Arbors of 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 Jeffrey Holloway 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 Jeffrey Holloway 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 of Dayton;

xii. Terminating employees at Arbors of 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 of 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 of Dayton.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors of 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 of 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 of 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 Jeffrey Holloway.

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 of Dayton.

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

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 of 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 Jeffrey Holloway, 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 Jeffrey Holloway.

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 Jeffrey Holloway.

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 Jeffrey Holloway.

iii. Upon information and belief, Plaintiff alleges that Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors of 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 Jeffrey Holloway to place him 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 Jeffrey Holloway.

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 Jeffrey Holloway's admissions agreement.

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

68. 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 Jeffrey Holloway.

69. As a direct and proximate result of the Nursing Home Defendants' failures as set out above, Jeffrey Holloway suffered injuries, weight loss, poor hygiene, medication mismanagement, wounds, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Jeffrey Holloway to incur significant hospital and medical expenses.

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

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

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

73. Separate Defendants' employees owed a duty to residents, including Jeffrey Holloway 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.

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

75. Defendants failed to meet the standard of care and violated its duty of care to Jeffrey Holloway 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 Jeffrey Holloway's condition;
- b. The failure to respond to significant signs and symptoms of change in the condition of Jeffrey Holloway;
- c. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Jeffrey Holloway;
- d. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Jeffrey Holloway's 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 Jeffrey Holloway;
- f. The failure to increase the number of nursing personnel to ensure that Jeffrey Holloway:
 - 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 Jeffrey Holloway attained and maintained his 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 Jeffrey Holloway 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 Jeffrey Holloway;

i. The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure the Jeffrey Holloway 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 Jeffrey Holloway;

l. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Jeffrey Holloway changed;

m. The failure to implement and ensure that an adequate nursing care plan for Jeffrey Holloway 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 Jeffrey Holloway with adequate and appropriate care so as to prevent the development, aggravation and progression of infection;

q. The failure to provide Jeffrey Holloway 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 Jeffrey Holloway with adequate and appropriate nursing care, treatments and medication for infection after the development of infection in the body of Jeffrey Holloway;

s. The failure to provide care, treatment, and medication in accordance with physician's orders;

t. The failure to provide Jeffrey Holloway 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 Jeffrey Holloway received adequate assessment of his nutritional needs;
- w. The failure to maintain medical records on Jeffrey Holloway 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 Jeffrey Holloway;
 - ii. the treatment of Jeffrey Holloway; and
 - iii. the assessment and establishment of appropriate plans of care and treatment.
- x. The failure to adequately and appropriately monitor Jeffrey Holloway and recognize significant changes in his health status; and
- y. The failure to prevent Jeffrey Holloway from developing pneumonia.

76. 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 Jeffrey Holloway's injuries. Jeffrey Holloway's injuries were all foreseeable to Defendants.

77. Defendants' conduct in breaching the duties owed to Jeffrey Holloway was negligent, grossly negligent, willful, wanton, malicious and reckless.

78. As a direct and proximate result of such negligent, grossly negligent, willful, wanton, reckless and malicious conduct, Jeffrey Holloway suffered injuries, including weight loss, poor hygiene, medication mismanagement, wounds and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Jeffrey Holloway to incur significant hospital and medical expenses.

79. 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 FIVE: MALICE, AND/OR GROSS NEGLIGENCE WHICH EVIDENCES A WILLFUL, WANTON, OR RECKLESS DISREGARD FOR THE SAFETY OF JEFFREY HOLLOWAY AGAINST ALL DEFENDANTS

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

81. 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 Jeffrey Holloway. Specifically, such conduct was undertaken by Defendants without regard to the health and safety consequences to those residents, such as Jeffrey Holloway, entrusted to their care. Moreover, such conduct evidences such little regard for their duties of care, good faith, and fidelity owed to Jeffrey Holloway.

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

83. 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 Jeffrey Holloway, he suffered injuries, including weight loss, poor hygiene, medication mismanagement, wounds, 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 Jeffrey Holloway to incur significant hospital and medical expenses.

84. 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 SIX: FRAUD AGAINST NURSING HOME DEFENDANTS; JOHN
DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10**

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

86. On or about November 26, 2012, Jeffrey Holloway was admitted to Arbors of Dayton, a nursing home owned and operated by the Defendants. Based on information and belief during this admission process of Jeffrey Holloway, Nursing Home Defendants made specific representations by and through their agent that would provide Jeffrey Holloway with the care and treatment that he required based on his needs.

87. During the admission process the Nursing Home Defendants made specific representations to Jeffrey Holloway and his 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 Jeffrey Holloway 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 Jeffrey Holloway or provide the level of care required pursuant to the plan of care prepared for Jeffrey Holloway.

88. Additionally, during this admission process which occurred on or about November 26, 2012, the Nursing Home Defendants were required to provide specific information to Jeffrey Holloway and his family as indicated in the admission agreement. Said information included “The Resident Handbook” and “Resident/Patient Rights” which contain additional representations made to Jeffrey Holloway and his family as to the quality and quantity of services that would be provided to Jeffrey Holloway during his residency.

89. 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 Jeffrey Holloway and his family. Nursing Home Defendants specifically misrepresented that they could and would provide twenty four hour a day nursing care and supervision to Jeffrey Holloway, when, in fact, Defendants knew that they would not do so and they were not sufficiently staffed or supplied to do so.

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

91. Nursing Home Defendants engaged in intentional fraud by concealing or failing to disclose material facts within Defendants' knowledge, when Defendants knew that Jeffrey Holloway and his 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 Jeffrey Holloway, 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 Jeffrey Holloway.

92. Further, Defendants intended to induce Jeffrey Holloway and his family to take some action: to wit, to admit and then allow Jeffrey Holloway 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, Jeffrey Holloway and his family suffered injury as described herein.

93. Nursing Home Defendants perpetuated a continued concealment of the truth, throughout the duration of Jeffrey Holloway's residency from September 2012 through his discharge on January 2013, related to the adequacy of the staffing and supplies available at the nursing home from which to provide care to Jeffrey Holloway. During the time frame of Jeffrey Holloway's residency the Nursing Home Defendants had information available indicating that they were insufficiently staffed and supplied to provide the care needed to Jeffrey Holloway 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;

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

95. 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 Jeffrey Holloway and his family from learning the truth so that he would be admitted to and remain at the facility.

96. Jeffrey Holloway and his 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 Jeffrey Holloway suffered damages.

97. As a consequence and as a proximate cause of the reliance on these misrepresentations, Jeffrey Holloway and his family suffered damages and failed to receive the quality and quantity of care that was paid for.

98. 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 SEVEN: BREACH OF FIDUCIARY DUTY AGAINST NURSING HOME
DEFENDANTS; JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10**

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

100. As a resident of Defendants' facility, Jeffrey Holloway was particularly dependent for his 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, Jeffrey Holloway and his family held in Defendants a special confidence and trust which Defendants accepted by admitting Jeffrey Holloway to their facility, and by determining the level of care to be provided to Jeffrey Holloway.

101. Jeffrey Holloway and his family relied upon the supposed superior knowledge, skill, and abilities of Defendants that Defendants held themselves out to have. Jeffrey Holloway and his family also relied on Defendants to provide care for Jeffrey Holloway, who, because of his age and infirmities, was not able to care for himself.

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

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

104. As a proximate cause of the foregoing breaches of duty by Defendants, Jeffrey Holloway suffered injuries as set forth above.

105. 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 Jeffrey Holloway.

COUNT EIGHT: PREMISES LIABILITY CLAIM AGAINST ALL DEFENDANTS

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

107. Defendants, during the time they owned, operated, managed, and/or controlled Arbors of 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 of Dayton.

108. 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 of Dayton.

109. 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.

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

111. 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 of 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.

112. 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;

113. 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 Jeffrey Holloway from harm within the facility;
- c. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Jeffrey Holloway'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 Jeffrey Holloway;
- 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.

114. 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.

115. 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.

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

117. As a direct and proximate result of the negligence of Defendants as set out above, Jeffrey Holloway suffered injuries, including weight loss, poor hygiene, medication mismanagement, wounds, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Jeffrey Holloway to incur significant hospital and medical expenses.

118. 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.

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, Jeffrey Holloway, 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 27th day of November, 2013.

Jeffrey Holloway

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Appendix not available.