

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
~~2nd~~ DIVISION

Gary G. Spencer, as Guardian of the Person and Estate of Eddie Lee Spencer, Sr., an incapacitated person


vs.

NO. 23CV-13-642

FILED
2013 AUG 15 AM 8 19
PLAINTIFF
RHONDA WHARTON, CLERK

BY MM DC

Salem Place Nursing and Rehabilitation Center, Inc.;
Central Arkansas Nursing Centers, Inc.; Nursing
Consultants, Inc. d/b/a Professional Nursing and
Rehabilitation Services; Salem Place Nursing Center, Inc.;
Michael S. Morton, individually, and in his capacity
as the sole owner, officer and managing member of
Salem Place Nursing and Rehabilitation Center, Inc.;
and Vickey Kirkemier, in her capacity as Administrator
of Salem Place Nursing and Rehabilitation Center, Inc.


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DEFENDANTS

COMPLAINT

Comes now Plaintiff, Gary G. Spencer, as Guardian of the Person and Estate of Eddie Lee Spencer, Sr., an incapacitated person, and for his cause of action against Defendants, Salem Place Nursing and Rehabilitation Center, Inc.; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc. d/b/a Professional Nursing and Rehabilitation Services; Salem Place Nursing Center, Inc.; Michael S. Morton, individually, and in his capacity as the sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc.; and Vickey Kirkemier, in her capacity as Administrator of Salem Place Nursing and Rehabilitation Center, Inc., states:

JURISDICTIONAL STATEMENT

1. Gary G. Spencer is Guardian of the Person and Estate of Eddie Lee Spencer, Sr., an incapacitated person, pursuant to Order of Pulaski County Circuit

Court, 16th Probate Division, Case No. 60PR-2013-1088, attached hereto as **Exhibit A**. Gary G. Spencer brings this claim on behalf of Eddie Lee Spencer, Sr., an incapacitated person, claiming damages on behalf of Eddie Lee Spencer, Sr., a resident of Maumelle, Pulaski County, Arkansas, arising out of care, services and treatment by Defendants during the time that Eddie Lee Spencer, Sr. resided at Salem Place Nursing and Rehabilitation Center, Inc.

2. Gary G. Spencer is the son of Eddie Lee Spencer, Sr. and is a resident of Lonoke, Arkansas.

3. Upon information and belief, Eddie Lee Spencer, Sr. was admitted on January 1, 2012, as a resident of Salem Place Nursing and Rehabilitation Center, Inc. located at 2401 Christina Lane, Conway, Faulkner County, Arkansas 72034, and, except for hospitalizations, remained a resident until March 7, 2013.

4. Defendant Salem Place Nursing and Rehabilitation Center, Inc., a domestic corporation authorized to do business in the State of Arkansas, is engaged in the business of for-profit custodial care of elderly individuals who are chronically infirm, mentally impaired and/or in need of nursing care and treatment. Upon information and belief, at all times material to this action, Defendant Salem Place Nursing and Rehabilitation Center, Inc. held the license for the facility located at 2401 Christina Lane, Conway, Faulkner County, Arkansas 72034. The causes of action made the basis of this suit arise out of such business conducted by Defendant Salem Place Nursing and Rehabilitation Center, Inc. in the ownership, operation, management, licensing and/or control of the facility during the residency of Eddie Lee Spencer, Sr. The registered agent for service of process of Defendant Salem Place Nursing and

Rehabilitation Center, Inc. is Kirkman T. Dougherty, 5000 Rogers Avenue, Suite 500, Fort Smith, Arkansas 72903.

5. Defendant Central Arkansas Nursing Centers, Inc., a domestic for-profit corporation, is authorized to do business in the State of Arkansas, and provides administrative services to 24 nursing facilities in Oklahoma, Missouri and Arkansas, including Salem Place Nursing and Rehabilitation Center, Inc. Upon information and belief, at all times material to this action, Defendant Central Arkansas Nursing Centers, Inc. operated, managed, controlled, or had the right to control, and/or provided services, including contracting to provide billing and accounting services, for Salem Place Nursing and Rehabilitation Center, Inc. during the residency of Eddie Lee Spencer, Sr. The registered agent for service of process of Defendant Central Arkansas Nursing Centers, Inc. is Kirkman T. Dougherty (incorrectly named with the Secretary of State as Kirkman T. Douglas), 5000 Rogers Avenue, Suite 500, Fort Smith, Arkansas 72903.

6. Defendant Nursing Consultants, Inc. d/b/a Professional Nursing and Rehabilitation Services, a domestic for-profit corporation, is authorized to do business in the State of Arkansas. Upon information and belief, at all times material to this action, Defendant Nursing Consultants, Inc. operated, managed, controlled, or had the right to control, and/or provided services, including consultant services, to Salem Place Nursing and Rehabilitation Center, Inc. during the residency of Eddie Lee Spencer, Sr. The agent for service of process of Defendant Nursing Consultants, Inc. d/b/a Professional Nursing and Rehabilitation Services is Kirkman T. Dougherty, 5000 Rogers Avenue, Suite 500, Fort Smith, Arkansas 72903.

7. Defendant Salem Place Nursing Center, Inc., a domestic for-profit corporation, is authorized to do business in the State of Arkansas. Upon information and belief, Defendant Salem Place Nursing Center, Inc. held the lease on the property on which Salem Place Nursing and Rehabilitation, Inc. was located during the residency of Eddie Lee Spencer, Sr. and otherwise operated, controlled, had the right to control, and/or provided services to Salem Place Nursing and Rehabilitation Center, Inc. during the residency of Eddie Lee Spencer, Sr. The registered agent for service of process of Defendant Salem Place Nursing Center, Inc. is Kirkman T. Dougherty, 5000 Rogers Avenue, Suite 500, Fort Smith, Arkansas 72903.

8. Defendant Michael S. Morton is the sole owner of Salem Place Nursing and Rehabilitation Center, Inc.; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc.; and Salem Place Nursing Center, Inc. Defendant Michael S. Morton was an officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc. during the residency of Eddie Lee Spencer, Sr. Defendant Michael S. Morton owned, operated, managed, and otherwise controlled or had the right to control, Salem Place Nursing and Rehabilitation Center, Inc. during the residency of Eddie Lee Spencer, Sr. Defendant Michael S. Morton may be served with process at his business address at 415 Rogers Avenue, Fort Smith, Arkansas 72901.

9. Upon information and belief, Defendant Vickey Kirkemier, a resident of the State of Arkansas, was an Administrator of Salem Place Nursing and Rehabilitation Center, Inc. during the residency of Eddie Lee Spencer, Sr. The causes of action made the basis of this suit arise in part out of Defendant Vickey Kirkemier's administration of

the facility during the residency of Eddie Lee Spencer, Sr. Defendant Vickey Kirkemier may be served at her current address.

10. Whenever the term "Nursing Home Defendants" is utilized within this suit, such term collectively refers to and includes Salem Place Nursing and Rehabilitation Center, Inc.; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc.; Salem Place Nursing Center, Inc.; and Michael S. Morton

11. Whenever the term "Administrator Defendant" is utilized within this suit, such term refers to Vickey Kirkemier.

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

13. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS

14. Upon information and belief, Eddie Lee Spencer, Sr. was admitted on January 1, 2012, as a resident of Salem Place Nursing and Rehabilitation Center, Inc. (sometimes referred to herein as "the facility") located at 2401 Christina Lane, Conway, Faulkner County, Arkansas 72034, and except for hospitalizations, remained a resident until March 7, 2013. Eddie Lee Spencer, Sr. is currently a resident of The Lakes at Maumelle Health and Rehabilitation in Maumelle, Arkansas.

15. Defendants were aware of the medical condition of Eddie Lee Spencer, Sr. and the care he required when they represented that they could adequately care for his needs.

16. Defendants are liable for all damages alleged in this matter in their capacity as the owners, operators, licensee(s) and/or managers of the facility during the residency of Eddie Lee Spencer, Sr.

17. In an effort to ensure that Eddie Lee Spencer, Sr. and other residents whose care was partially funded by the government were placed at Salem Place Nursing and Rehabilitation Center, Inc., Defendants held themselves out to the Arkansas Department of Human Services (DHS) and the public at large 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 their nursing home residents;
- c) Able to specifically meet the total nursing home, medical and physical therapy needs of Eddie Lee Spencer, Sr. and other residents like him; and
- d) Licensed by DHS and complying on a continual basis with all rules, regulations and standards established for nursing homes.

18. In surveys and inspections conducted during or proximate to the residency of Eddie Lee Spencer, Sr., Salem Place Nursing and Rehabilitation Center, Inc. was cited for regulatory deficiencies related to the care and treatment of the facility's residents. Salem Place Nursing and Rehabilitation Center, Inc. was cited with the following deficiencies, among others, determining that the facility failed to:

- a) Provide medically-related social services to help each resident achieve the highest possible quality of life;
- b) Make sure that each resident who enters the nursing home without a catheter is not given a catheter, and receives proper services to prevent urinary tract infections and restore normal bladder function;
- c) Store, cook, and serve food in a safe and clean way;

- d) Provide necessary care and services to maintain the highest well being of each resident;
- e) Assist those residents who need total help with eating/drinking, grooming and personal and oral hygiene; and
- f) Give residents proper treatment to prevent new bed (pressure) sores or heal existing bed sores.

19. The extent to which the above citations directly included failures or deficiencies in the care, services and treatment provided to Eddie Lee Spencer, Sr. remains to be discovered. However, all of the above cited deficiencies establish that Defendants were on notice and aware of problems with resident care, including failures and deficiencies in care which caused the injuries alleged herein.

20. Defendants failed to discharge their obligations of care to Eddie Lee Spencer, Sr. with a conscious disregard for his rights and safety. At all times mentioned herein, Defendants, through their corporate officers and administrators, had knowledge of, ratified and/or otherwise authorized all of the acts and omissions that caused the injuries suffered by Eddie Lee Spencer, Sr., as more fully set forth below. Defendants knew that this facility could not provide the minimum standard of care to the weak and vulnerable residents of the facility, including Eddie Lee Spencer, Sr.

21. The severity of the recurrent negligence inflicted upon Eddie Lee Spencer, Sr. while under the care of the facility accelerated the deterioration of his health and physical condition and resulted in the physical and emotional injuries described below:

- a) Fall due to inappropriate use of assistive device, resulting in multiple fractures;
- b) Closed head injury;
- c) Hematoma left occipital;

- d) Fractured left clavicle;
- e) Delay in seeking treatment and worsening of distal femur fracture;
- f) Severe pain;
- g) Failure to obtain treatment for urinary tract infections;
- h) Multiple urinary tract Infections, including with *Escherichia Coli*, *Morganella Morganii*, and *Serratia Marcescens*;
- i) Sepsis, secondary to urinary tract infection;
- j) Acute dehydration, requiring hospitalization;
- k) Malnutrition;
- l) Poor hygiene;
- m) Failed to treat Hydroureteronephrosis for 7 weeks;
- n) Failed to report condition to family in timely manner, multiple occasions; and
- o) Failed to report condition to physician in timely manner, multiple occasions.

The above-identified injuries, as well as the conduct specified below, caused Eddie Lee Spencer, Sr. to suffer loss of personal dignity, pain and suffering, hospitalizations, mental anguish, degradation, disfigurement, disability, and emotional distress.

22. Defendants controlled, or had the right to control, the operation, planning, management and quality control of the facility. The authority exercised over the nursing facility included, but was not limited to, budgeting, marketing, human resources management, training, staffing, creation and implementation of all policy and procedure manuals used by the facility, federal and state reimbursement, quality care assessment

and compliance, licensure and certification, legal services, and financial, tax and accounting control through fiscal policies established by Defendants.

23. Michael S. Morton operated Salem Place Nursing and Rehabilitation Center, Inc.; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc.; and Salem Place Nursing Center, Inc. as if they were one business. Upon information and belief, Michael S. Morton participated in, authorized, directed, had knowledge of, consented to, and/or acquiesced in the budgetary, staffing and supply shortfalls at Salem Place Nursing and Rehabilitation Center. Moreover, upon information and belief, Michael S. Morton loosely transferred funds among himself, Salem Place Nursing and Rehabilitation Center, Inc.; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc.; and Salem Place Nursing Center, Inc. Plaintiff asserts that Michael S. Morton used the corporate entities constituting the corporate Defendants to defeat the public policy of protecting the residents of Salem Place Nursing and Rehabilitation Center, Inc., including Eddie Lee Spencer, Sr., and that he should be held liable as an alter-ego of Salem Place Nursing and Rehabilitation Center, Inc.; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc.; and Salem Place Nursing Center, Inc.

24. Michael S. Morton, through the corporate entities operating, personally controlled, or had the right to control, the operation, financial, and health care services provided at Salem Place Nursing and Rehabilitation Center. Plaintiff asserts that Michael S. Morton's personal negligent conduct and involvement in operating these companies makes him personally liable under all theories pled herein.

25. Defendants operated and managed the facility so as to maximize profits by reducing staffing levels below that needed to provide adequate care to residents that

would comply with federal and state regulations governing skilled nursing facilities. Thus, Defendants intentionally and/or with reckless disregard for the consequences of their actions caused staffing levels at their facility to be set so that the personnel on duty at any given time could not reasonably tend to the needs of their assigned residents. Upon information and belief, Defendants knowingly established staffing levels that created recklessly high nurse/resident ratios and disregarded patient acuity levels as well as the minimal time required to perform essential functions. The acts and omissions of Defendants were motivated by a desire to increase profitability by reducing expenditures for needed staff, training, supervision and care to levels that would predictably lead to severe injury. All of these acts of malfeasance directly caused injury to Eddie Lee Spencer, Sr. and other residents of the facility and were known to Defendants.

26. Defendants owed a duty to Eddie Lee Spencer, Sr. to maintain and adequately staff their facility with sufficient numbers of qualified, trained staff to meet the needs of the residents, including Eddie Lee Spencer, Sr., and are directly liable for the failure to exercise reasonable care in hiring, supervising, training and retaining sufficient numbers of qualified nurses and other staff employees and caregivers during the residency of Eddie Lee Spencer, Sr. Said failures placed the residents of the facility, including Eddie Lee Spencer, Sr., at risk of harm. Defendants are directly liable for injuries suffered by Eddie Lee Spencer, Sr. as a result of these failures to exercise reasonable care. Likewise, Defendants owed a duty to Eddie Lee Spencer, Sr. to have adequate and available food, fluids, supplies and functioning equipment to meet the needs of the residents, including Eddie Lee Spencer, Sr., and are directly liable for the

failure to exercise reasonable care in providing and maintaining adequate and available food, fluids, supplies and functioning equipment to meet the needs of the residents. Said failures placed the residents of the facility, including Eddie Lee Spencer, Sr., at risk of harm. Defendants are directly liable for injuries suffered by Eddie Lee Spencer, Sr. as a result of these failures to exercise reasonable care.

27. Plaintiff alleges that during his residency at the facility, Eddie Lee Spencer, Sr. was under the care, supervision and treatment of Defendants and that the injuries complained of were proximately caused by the acts and omissions of Defendants.

28. Defendants are vicariously liable for the acts and omissions of all persons or entities under their control, either directly or indirectly, including employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, or agencies causing or contributing to the injuries of Eddie Lee Spencer, Sr.

CAUSES OF ACTION AGAINST NURSING HOME DEFENDANTS

COUNT ONE

NEGLIGENCE

29. Plaintiff incorporates all of the allegations contained in Paragraphs 1 – 28 as if fully set forth herein.

30. Nursing Home Defendants owed a non-delegable duty to their residents, including Eddie Lee Spencer, Sr., to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

31. Nursing Home Defendants owed a non-delegable duty to their residents, including Eddie Lee Spencer, Sr., to exercise reasonable care in providing care and services in a safe and beneficial manner.

32. Nursing Home Defendants owed a non-delegable duty to their residents, including Eddie Lee Spencer, Sr., to hire, train and supervise employees to deliver care and services to residents in a safe and beneficial manner.

33. Nursing Home Defendants breached these duties by failing to exercise reasonable care and by failing to prevent the mistreatment, abuse and neglect of Eddie Lee Spencer, Sr. The negligence of Nursing Home Defendants includes, but is not limited to, the following acts and omissions:

- a) Failure to provide sufficient nursing and other staff that was properly qualified and trained;
- b) Failure to adequately, timely and appropriately educate and inform the caregivers at the facility of the needs, level of assistance, and prescribed care and treatment for Eddie Lee Spencer, Sr.;
- c) Failure to take reasonable steps to prevent, eliminate and correct deficiencies and problems in resident care at the facility;
- e) Failure to ensure that Eddie Lee Spencer, Sr. attained and maintained his highest level of physical, mental, and psychosocial well-being;
- d) Failure to establish, publish and/or adhere to policies for nursing personnel concerning the care and treatment of residents with nursing, medical and psychosocial needs similar to those of Eddie Lee Spencer, Sr.;
- e) Failure to ensure that Eddie Lee Spencer, Sr. received adequate and proper nutrition, fluids, supervision, and skin care;
- f) Failure to provide and maintain an adequate and appropriate fluid maintenance program for Eddie Lee Spencer, Sr. to prevent dehydration and infections;

- g) Failure to ensure that Eddie Lee Spencer, Sr. received adequate nutrition to prevent malnourishment;
- h) Failure to provide proper supervision and intervention to prevent falls resulting in injuries;
- i) Failure to take necessary and reasonable custodial and hygiene measures to prevent the onset and progression of skin issues during the residency;
- j) Failure to provide care and treatment in accordance with physician's orders;
- k) Failure to provide Eddie Lee Spencer, Sr. with adequate sanitary care;
- l) Failure to provide adequate hygiene and sanitary care to prevent infections;
- m) Failure to adequately and appropriately monitor Eddie Lee Spencer, Sr. and recognize significant changes in his health status, and to timely notify him and his family of significant changes in his health status;
- n) Failure to monitor or increase the number of nursing personnel at the facility to ensure that Eddie Lee Spencer, Sr. received necessary supervision, timely and accurate care assessments, received proper treatment and diet, received timely custodial intervention due to a significant change in condition, and was protected from accidental injuries by the correct use of ordered and reasonable safety measures;
- o) Failure to provide adequate supervision to the nursing staff to ensure that Eddie Lee Spencer, Sr. received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments to prevent infection, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Eddie Lee Spencer, Sr.;
- p) Failure to adequately screen, evaluate, and check references, test for competence and use ordinary care in selecting nursing personnel to work at the facility;
- q) Failure to terminate employees at the facility assigned to Eddie Lee Spencer, Sr. who were known to be careless, incompetent and unwilling to comply with standards governing care, treatment and services provided to residents like Eddie Lee Spencer, Sr.;

- r) Failure to assign nursing personnel at the facility duties consistent with their education and experience based on:
 - 1) Eddie Lee Spencer, Sr.'s medical history and condition, nursing and rehabilitative needs;
 - 2) The characteristics of the resident population residing in the area of the facility where Eddie Lee Spencer, Sr. was a resident; and
 - 3) The nursing skills needed to provide care to such resident population;
- s) Failure by Nursing Home Defendants to discharge their legal and lawful duties to protect the health and safety of residents, such as Eddie Lee Spencer, Sr.; that such duties were consistently complied with on an ongoing basis; and to ensure appropriate corrective measures were implemented to correct problems concerning inadequate resident care;
- t) Failure by Nursing Home Defendants to discharge their legal and lawful obligation to ensure compliance with the facility's resident care policies;
- u) Failure to adopt adequate guidelines, policies, and procedures of the facility for documenting, maintaining files, investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at the facility, regardless of whether such complaint derived from a resident of the facility, an employee of the facility or any interested person;
- v) Failure to document and maintain medical records on Eddie Lee Spencer, Sr. in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible and systematically organized with respect to diagnosis, treatment and assessment and establishment of appropriate care plans of care and treatment;
- w) Failure to properly in-service and orient employees to pertinent patient care needs to maintain the safety of residents;
- x) Failure to ensure that services provided or arranged by the facility were provided by qualified persons in accordance with Eddie Lee Spencer, Sr.'s written plan of care and failure to ensure that the physician's plan of care was implemented; and
- y) Failure to provide a safe environment.

34. A reasonably careful nursing home operating under similar circumstances would foresee that the failure to provide the ordinary care listed above would result in devastating injuries to Eddie Lee Spencer, Sr.

35. Nursing Home Defendants further breached their duties of care to Eddie Lee Spencer, Sr. by violating certain laws and regulations in force in the State of Arkansas at the time of the occurrences discussed herein including, but not limited to, the following:

- a) By failing to provide the necessary care and services to attain or maintain the highest practicable, physical, mental and psychosocial well-being of Eddie Lee Spencer, Sr., in accordance with the comprehensive assessment and plan of care;
- b) By failing to ensure a nursing care plan based on Eddie Lee Spencer, Sr.'s problems and needs was established that contained measurable objectives and timetables to meet his medical, nursing, and mental and psychosocial needs as identified in his comprehensive assessment;
- c) By failing to review and revise Eddie Lee Spencer, Sr.'s nursing care plan when his needs changed;
- d) By failing to treat Eddie Lee Spencer, Sr. courteously, fairly and with the fullest measure of dignity;
- e) By failing to provide sufficient nursing staff and nursing personnel to ensure that Eddie Lee Spencer, Sr. attained and maintained his highest practicable physical, mental and psychosocial well-being;
- f) By failing to notify the family and physician of Eddie Lee Spencer, Sr. of a need to alter his treatment significantly.
- g) By failing to provide a safe environment; and
- h) By failing to administer the facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

36. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed above. Each of the foregoing

acts of negligence on the part of Nursing Home Defendants was a proximate cause of Eddie Lee Spencer, Sr.'s injuries as more specifically described herein, which were all foreseeable. Eddie Lee Spencer, Sr. suffered personal injuries including pain and suffering and mental anguish, experienced in the past and reasonably certain to be experienced in the future, necessary medical care, treatment and services incurred in the past and reasonably certain to be experienced in the future, degradation, disability, disfigurement, emotional distress, and loss of personal dignity. Plaintiff prays for compensatory damages against Nursing Home Defendants for the injuries incurred by Eddie Lee Spencer, Sr.

37. Nursing Home Defendants knew, or ought to have known, in light of the surrounding circumstances, that their conduct would naturally and probably result in injury to Eddie Lee Spencer, Sr. Yet, Nursing Home Defendants continued such conduct in reckless disregard of the consequences, from which malice may be inferred. As a direct and proximate result of such grossly negligent, willful, wanton, reckless, malicious and/or intentional conduct, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Nursing Home Defendants including, but not limited to, Eddie Lee Spencer, Sr.'s necessary medical care, treatment and services incurred in the past and reasonably certain to be experienced in the future, pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future, degradation, disability, disfigurement, emotional distress and loss of personal dignity, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court

jurisdiction in diversity of citizenship cases, plus all other relief to which Plaintiff is entitled by law.

COUNT TWO

NEGLIGENCE AGAINST MICHAEL S. MORTON, INDIVIDUALLY, AND IN HIS CAPACITY AS THE SOLE OWNER, OFFICER AND MANAGING MEMBER OF SALEM PLACE NURSING AND REHABILITATION CENTER, INC.

38. Plaintiff incorporates all of the allegations contained in Paragraphs 1 - 37.

39. Upon information and belief, Michael S. Morton directly participated in and exercised ultimate control over the operation and business of Salem Place Nursing and Rehabilitation Center, Inc. Michael S. Morton's involvement went beyond mere oversight and commission of acts consistent with any investor or ownership status.

40. Upon information and belief, ultimate ownership, authority and control, or right to control, Defendants Salem Place Nursing and Rehabilitation Center, Inc.; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc. a/k/a Professional Nursing and Rehabilitation Services; and Salem Place Nursing Center, Inc., were vested in one person, Michael S. Morton.

41. Upon information and belief, Michael S. Morton participated in, authorized, directed, had knowledge of, consented to, and/or acquiesced in the budgetary, staffing and supply shortfalls at Salem Place Nursing and Rehabilitation Center, Inc. Michael S. Morton personally controlled, or had right to control, the operation, financial, health care, and other services provided at Salem Place Nursing and Rehabilitation Center, Inc. Michael S. Morton's negligent conduct, personally and individually, in the operation, management and control of these entities results in his personal liability under all theories pleaded herein.

42. Michael S. Morton created and promoted a corporate philosophy that sought to maximize profits at Salem Place Nursing and Rehabilitation Center, Inc. without regard for the law and public policy governing patient care and treatment and protecting residents like Eddie Lee Spencer, Sr. This corporate philosophy entailed, among other things, cutting expenses for hiring, training, and supervising staff at Salem Place Nursing and Rehabilitation Center, Inc., failing to allocate available funds such that Salem Place Nursing and Rehabilitation Center, Inc. was deprived of necessary resources, negligently hiring, training, and supervising staff at Salem Place Nursing and Rehabilitation Center, Inc., and ignoring complaints of poor care, all to the detriment of residents like Eddie Lee Spencer, Sr.

43. Michael S. Morton supervised the actions of the facility and made the decision to under-staff. He told the facility how much money he would make available for staff and other resources, and he created the facility's framework in how it should operate on a daily basis. He did so knowing that these decisions were critical to resident health and safety.

44. Michael S. Morton took it upon himself to determine whether adequate numbers of sufficiently trained personnel were in place to monitor for him the care and operations of Salem Place Nursing and Rehabilitation Center, Inc. He told the facility how much staff to hire, how to train them, and how to operate on a daily basis. He did so knowing that these decisions were critical to resident health and safety.

45. By depriving the facility of adequate, available resources, Michael S. Morton made the decision to under-staff.

46. Upon information and belief, Michael S. Morton ignored warnings from within his organizations that the facility was understaffed.

47. Michael S. Morton directly authorized, directed, and acquiesced in the negligent operation of Salem Place Nursing and Rehabilitation Center, Inc. that resulted in harm to Eddie Lee Spencer, Sr.

48. As sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc., Michael S. Morton was legally obligated to ensure that the rules and regulations designed to protect the health and safety of the residents of Salem Place Nursing and Rehabilitation Center, Inc., such as Eddie Lee Spencer, Sr., as promulgated by the Arkansas Department of Health and Services and the Arkansas Office of Long Term Care, were consistently complied with on an ongoing basis. Upon information and belief, Michael S. Morton ignored complaints and evidence that the rules and regulations designed to protect the health and safety of the residents of Salem Place Nursing and Rehabilitation Center, Inc., such as Eddie Lee Spencer, Sr., were not being consistently complied with on an ongoing basis. Further, he failed to fulfill his statutory obligation to ensure that the rules and regulations were consistently complied with on an ongoing basis.

49. As sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc., Michael S. Morton was legally obligated to ensure that appropriate corrective measures were implemented to correct problems concerning inadequate resident care. Upon information and belief, Michael S. Morton ignored complaints regarding and evidence of inadequate resident care at Salem Place Nursing

and Rehabilitation Center, Inc. Further, he failed to establish and implement appropriate corrective measures to correct problems concerning inadequate resident care.

50. Michael S. Morton, as sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc., failed to establish and implement policies regarding management of the facility, and he failed to appoint an effective administrator to manage Salem Place Nursing and Rehabilitation Center, Inc. The negligence of Michael S. Morton, in his capacity as sole owner, officer and managing member of the facility, is further evidenced by the following acts and omissions:

- a) Failure to ensure that Eddie Lee Spencer, Sr. attained and maintained his highest level of physical, mental, and psychosocial well-being;
- b) Failure to establish and implement policies regarding the care and treatment of residents with nursing, medical and psychosocial needs similar to those of Eddie Lee Spencer, Sr.;
- c) Failure to ensure that residents, including Eddie Lee Spencer, Sr., were provided care, treatment and medication in accordance with physician's orders;
- d) Failure to provide a safe environment;
- e) Failure to ensure that residents, including Eddie Lee Spencer, Sr., were provided with adequate and appropriate hygiene and a sanitary environment to prevent infections;
- f) Failure to investigate, document, and report alleged violations involving mistreatment, neglect, or abuse, including injuries of an unknown source;
- g) Failure to ensure that residents, including Eddie Lee Spencer, Sr., were provided appropriate diet, care, medication, equipment, supplies, services, and treatment based on assessments, physician's orders and/or required limitations;

- h) Failure to provide sufficient numbers of qualified personnel, including registered nurses, licensed practical nurses, certified nurse assistants and medication aides to meet the total needs of Eddie Lee Spencer, Sr. throughout his residency;
- i) Failure to increase the number of nursing personnel at the facility to ensure that residents, including Eddie Lee Spencer, Sr.:
 - 1) Received timely and accurate care assessments;
 - 2) Received proper treatment, medication, and diet; and
 - 3) Was protected from accidental injuries by the correct use of ordered and reasonable safety measures;
- j) Failure to provide adequate supervision to the staff to ensure that Eddie Lee Spencer, Sr. received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments, and skin care to prevent infections, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Eddie Lee Spencer, Sr.;
- k) Failure to adequately screen, evaluate, and check references, test for competence, and use ordinary care in selecting nursing personnel to work at the facility;
- l) Failure to terminate employees at the facility assigned to Eddie Lee Spencer, Sr. that Michael S. Morton, or his agents, knew, or had reason to know, were careless, incompetent and unwilling to comply with standards governing care, treatment and services provided to residents like Eddie Lee Spencer, Sr.;
- m) Failure to assign nursing personnel at the facility duties consistent with their education and experience based on:
 - 1) Eddie Lee Spencer, Sr.'s medical history and condition, nursing and rehabilitative needs;
 - 2) The characteristics of the resident population residing in the area of the facility where Eddie Lee Spencer, Sr. was a resident; and,
 - 3) The nursing skills needed to provide care to such resident population;

- n) Failure to establish and implement adequate guidelines, policies, and procedures at the facility for documenting, maintaining files, investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at the facility, regardless of whether such complaint derived from a resident of the facility, an employee of the facility or any interested person;
- o) Failure to provide sufficient staff, supplies, equipment, and resources to ensure that residents, including Eddie Lee Spencer, Sr., were provided with appropriate nutrition, fluids, supervision, medication and skin care;
- p) Failure to maintain resident medical records in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible and systematically organized with respect to diagnosis, treatment and assessment;
- q) Failure to establish and implement policies mandating the establishment, review and updating of appropriate plans of care and treatment for residents; and
- r) Failure to properly in-service and orient employees to pertinent patient care needs to maintain the safety of residents like Eddie Lee Spencer, Sr.

51. Michael S. Morton's failure to discharge his duties as sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc. led to the failures in care listed herein and resulted in devastating injuries to Eddie Lee Spencer, Sr.

52. In addition, Michael S. Morton, as sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc., violated certain laws and regulations in force in the State of Arkansas, further evidencing his failures with regard to management of the facility. These failures resulted in violations including, but not limited to, the following:

- a) Failure to provide the necessary care and services to attain or maintain the highest practicable, physical, mental and psychosocial well-being of Eddie Lee Spencer, Sr., in accordance with the comprehensive assessment and plan of care;
- c) Failure to ensure a nursing care plan based on Eddie Lee Spencer, Sr.'s problems and needs was established, reviewed, and revised, to contain measurable objectives and timetables to meet his changing medical, nursing, and mental and psychosocial needs;
- d) Failure to treat Eddie Lee Spencer, Sr. courteously, fairly and with the fullest measure of dignity;
- e) Failure to provide sufficient nursing staff and nursing personnel to ensure that Eddie Lee Spencer, Sr. attained and maintained his highest practicable physical, mental and psychosocial well-being;
- f) Failure to notify the family and physician of Eddie Lee Spencer, Sr. of a need to alter his treatment significantly;
- g) Failure to provide a safe environment; and
- h) Failure to administer the facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

53. A reasonably prudent managing member or officer of a nursing home, under the same or similar conditions, would not have failed to discharge its duties with respect to management and oversight, resulting in inadequate and improper care and treatment rendered to residents like Eddie Lee Spencer, Sr.

54. Each of the foregoing acts of negligence on the part of Eddie Lee Spencer, Sr., as sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc., was a proximate cause of Eddie Lee Spencer, Sr.'s injuries, which were all foreseeable.

55. Eddie Lee Spencer, Sr. suffered personal injuries including pain and suffering and mental anguish, experienced in the past and reasonably certain to be experienced in the future, necessary medical care, treatment and services incurred in the past and reasonably certain to be experienced in the future, degradation, disability, disfigurement, emotional distress, and loss of dignity. Plaintiff prays for compensatory damages against Michael S. Morton, individually, and in his capacity as sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc., for the injuries incurred by Eddie Lee Spencer, Sr.

56. Michael S. Morton, both individually and in his capacity as sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc., likely knew or ought to have known, in light of the surrounding circumstances, that his conduct would naturally and probably result in injury to the residents of Salem Place Nursing and Rehabilitation Center, Inc., yet Michael S. Morton, individually and as sole owner, officer and managing member of the facility, continued the conduct in reckless disregard of the consequences, from which malice may be inferred. Michael S. Morton's actions, individually and in his capacity as sole owner, officer and managing member of Salem Place Nursing and Rehabilitation Center, Inc., were grossly negligent and demonstrated a reckless disregard for the health and safety of Eddie Lee Spencer, Sr.

57. As a direct and proximate result of such grossly negligent, willful, wanton, reckless, malicious and/or intentional conduct, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Michael S. Morton, individually and as sole owner, officer and managing member of Salem Place Nursing and Rehabilitation

Center, Inc., including, but not limited to, Eddie Lee Spencer, Sr.'s necessary medical care, treatment and services incurred in the past and reasonably certain to be experienced in the future, pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future, degradation, disability, disfigurement, emotional distress, and loss of personal dignity, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court, and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus all other relief to which Plaintiff is entitled by law.

COUNT THREE

**NEGLIGENCE AS DEFINED BY THE ARKANSAS MEDICAL
MALPRACTICE ACT, ARK. CODE ANN. §§ 16-114-201 et seq.**

58. Plaintiff re-alleges and incorporates all of the allegations contained in Paragraphs 1 – 28 as if fully set forth herein.

59. Nursing Home Defendants are either medical care providers as defined by Ark. Code Ann. § 16-114-201(2) and/or are liable for medical care providers as defined by Ark. Code Ann. § 16-114-201(2).

60. Nursing Home Defendants owed a non-delegable duty to residents, including Eddie Lee Spencer, Sr., to use reasonable care in treating their residents with the degree of skill and learning ordinarily possessed and used by nursing home facilities and affiliated health care providers in the same or similar locality.

61. Nursing Home Defendants owed a non-delegable duty to assist all residents, including Eddie Lee Spencer, Sr., in attaining and maintaining the highest level of physical, mental and psychosocial well-being.

62. Nursing Home Defendants failed to meet the applicable standards of care and violated their duty of care to Eddie Lee Spencer, Sr. through mistreatment, abuse and neglect. Nursing Home Defendants failed to adequately supervise nurses and aides and failed to hire sufficient nurses and aides. As such, the nurses and aides were unable to provide Eddie Lee Spencer, Sr. the requisite care, and as a result, acts of professional negligence occurred as set forth in this paragraph. The medical negligence of Nursing Home Defendants includes, but is not limited to, the following acts and omissions:

- a) Failure to ensure that Eddie Lee Spencer, Sr. received the following:
 - 1) timely and accurate care assessments;
 - 2) prescribed treatment, medication and diet;
 - 3) necessary supervision; and
 - 4) timely nursing and medical intervention due to a significant change in condition;
- b) Failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants and medication aides to meet the total needs of Eddie Lee Spencer, Sr. throughout his residency;
- c) Failure to provide, implement, and ensure adequate nursing care plan revisions and modifications as the needs of Eddie Lee Spencer, Sr. changed;
- d) Failure to provide, implement and ensure that an adequate nursing care plan for Eddie Lee Spencer, Sr. was followed by nursing personnel;
- e) Failure to provide care, treatment, and medication in accordance with physician's orders;
- f) Failure to assess the risk and prevent Eddie Lee Spencer, Sr. from falls resulting in injuries;

- g) Failure to assess the risk and prevent, treat or heal the development or worsening of skin issues, skin breakdown and pressure sores;
- h) Failure to assess the risk, monitor, and provide adequate care and treatment to treat, heal, or prevent the development or worsening of infections;
- i) Failure to ensure that Eddie Lee Spencer, Sr. was assessed in order to receive adequate and proper nutrition, fluids, supervision, therapeutic diet, and skin care;
- j) Failure to assess Eddie Lee Spencer, Sr.'s fluid intake to ensure he received sufficient amounts of fluids to prevent dehydration and infections;
- k) Failure to ensure that Eddie Lee Spencer, Sr. received adequate assessment and monitoring of his nutritional needs and intake to prevent malnourishment;
- l) Failure to provide proper treatment, assessment and monitoring of Eddie Lee Spencer, Sr. in order to identify signs and symptoms of pain, and to appropriately treat and prevent his pain;
- m) Failure to adequately and appropriately monitor Eddie Lee Spencer, Sr. and recognize significant changes in his health status, and to timely notify his physician of significant changes in his health status; and
- n) Failure to ensure that Eddie Lee Spencer, Sr. was not deprived of the services necessary to maintain his health and welfare.

63. 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 Nursing Home Defendants was a proximate cause of Eddie Lee Spencer, Sr.'s injuries, as more specifically described herein, which were all foreseeable. Eddie Lee Spencer, Sr. suffered personal injuries including pain and suffering and mental anguish, experienced in the past and reasonably certain to be experienced in the future, necessary medical care, treatment

and services incurred in the past and reasonably certain to be experienced in the future, degradation, disability, disfigurement, emotional distress and loss of personal dignity. Plaintiff prays for compensatory damages against Nursing Home Defendants for the injuries incurred by Eddie Lee Spencer, Sr.

64. Nursing Home Defendants were negligent and reckless in breaching the duties owed to Eddie Lee Spencer, Sr. under the Medical Malpractice Act for the reasons specifically enumerated in this Complaint.

65. Nursing Home Defendants knew, or ought to have known, in light of the surrounding circumstances, that their conduct would naturally and probably result in injury to Eddie Lee Spencer, Sr. Yet, Nursing Home Defendants continued such conduct in reckless disregard of the consequences, from which malice may be inferred. As a direct and proximate result of such grossly negligent, willful, wanton, reckless, malicious, and/or intentional conduct, Eddie Lee Spencer, Sr. suffered injuries as described herein. Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Nursing Home Defendants, including, but not limited to, Eddie Lee Spencer, Sr.'s necessary medical care, treatment and services incurred in the past and reasonably certain to be experienced in the future, pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future, degradation, disability, disfigurement, emotional distress and loss of personal dignity, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus all other relief to which Plaintiff is entitled by law.

COUNT FOUR

LIABILITY OF THE LICENSEE OF SALEM PLACE NURSING AND REHABILITATION CENTER, INC. FOR VIOLATIONS OF THE LONG-TERM CARE FACILITY RESIDENTS ACT, ARK. CODE ANN. §§ 20-10-1201 *et seq.*

66. Plaintiff incorporates all of the allegations contained in Paragraphs 1 – 65 as if fully set forth herein.

67. Among the Nursing Home Defendants, the licensee of Salem Place Nursing and Rehabilitation Center, Inc. had statutorily-mandated duties to provide Eddie Lee Spencer, Sr. his basic, nursing home resident's rights as set forth in the Protection of Long-Term Care Facility Residents Act, Ark. Code Ann. §§ 20-10-1201 *et seq.*

68. The Protection of Long-Term Care Facility Residents Act mandates the development, establishment, and enforcement of basic standards for the health, care, and treatment of persons in long-term care facilities; and mandates that the maintenance and operation of long-term care facilities will ensure safe, adequate, and appropriate care, treatment, and health of residents, like Eddie Lee Spencer, Sr.

69. The statutory duties imposed upon the facility licensee to prevent deprivation or infringement of the resident's rights of Eddie Lee Spencer, Sr. were non-delegable. Thus, among the Nursing Home Defendants, the licensee is directly liable to Plaintiff for any deprivation and infringement of Eddie Lee Spencer, Sr.'s resident's rights occurring as a result of its own action or inaction, and as a result of the action or inaction of any other person or entity, including employees, agents, consultants, independent contractors and affiliated entities, whether in-house or outside entities, individuals, agencies or pools.

70. Any person or entity acting as an employee or agent of Salem Place Nursing and Rehabilitation Center, Inc. assumed and undertook to perform the non-delegable and statutorily-mandated duties of the licensee to provide Eddie Lee Spencer, Sr. his nursing home resident's rights as set forth in Ark. Code Ann. §§ 20-10-1201 *et seq.* in the operation and management of Salem Place Nursing and Rehabilitation Center, Inc.

71. Notwithstanding the responsibility of the licensee to protect and provide for these statutorily-mandated, nursing home resident's rights, Nursing Home Defendants infringed upon, and Eddie Lee Spencer, Sr. was deprived of, rights mandated by Ark. Code Ann. §§ 20-10-1201 *et seq.* including, but not limited to, the following:

- a) The right to receive adequate and appropriate health care and protective and support services, including social services, mental health services, if available, planned recreational activities, and therapeutic and rehabilitative services consistent with the resident care plan for Eddie Lee Spencer, Sr., with established and recognized practice standards within the community, and with rules as adopted by federal and state agencies, such rights include:
 - 1) The right to receive adequate and appropriate custodial service, defined as care for Eddie Lee Spencer, Sr. which entailed observation of diet and sleeping habits and maintenance of a watchfulness over his general health, safety, and well-being; and
 - 2) The right to receive adequate and appropriate residential care plans, defined as a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and Eddie Lee Spencer, Sr. or his designee or legal representative, which included a comprehensive assessment of the needs of Eddie Lee Spencer, Sr., a listing of services provided within or outside the facility to meet those needs, and an explanation of service goals;
- b) The right to regular, consultative, and emergency services of physicians;

- c) The right to appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff;
- d) The right to access to dental and other health-related services, recreational services, rehabilitative services, and social work services appropriate to the needs and conditions of Eddie Lee Spencer, Sr., and not directly furnished by the licensee;
- e) The right to a wholesome and nourishing diet sufficient to meet generally accepted standards of proper nutrition, guided by standards recommended by nationally recognized professional groups and associations with knowledge of dietetics, and such therapeutic diets as may be prescribed by attending physicians;
- f) The right to a facility with its premises and equipment, and conduct of its operations maintained in a safe and sanitary manner;
- g) The right to be free from mental and physical abuse, and from chemical restraints;
- h) The right of Eddie Lee Spencer, Sr. to have privacy of his body in treatment and in caring for his personal needs;
- i) The right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to resident care and the behavior of other residents;
- j) The right to participate in social, religious, and community activities;
- k) The right to the obligation of the facility to keep full records of the admissions and discharges of Eddie Lee Spencer, Sr., and his medical and general health status, including:
 - 1) medical records;
 - 2) personal and social history;
 - 3) individual resident care plans, including, but not limited to, prescribed services, service frequency and duration, and service goals; and
 - 4) making it a criminal offense to fraudulently alter, deface, or falsify any medical or other long-term care facility record, or cause or procure any of these offenses to be committed;

- l) The right to properly supervised staff and residents to prevent the misappropriation of personal property; and
- m) The right to be treated courteously, fairly, and with the fullest measure of dignity.

72. The aforementioned infringement and deprivation of the rights of Eddie Lee Spencer, Sr. were the result of Nursing Home Defendants failing to do that which a reasonably careful person would do under similar circumstances.

73. As a direct and proximate result of the aforementioned violations, Eddie Lee Spencer, Sr. suffered injuries as described herein. Plaintiff, pursuant to Ark. Code Ann. § 20-10-1209(a)(4), is entitled to recover actual damages against the licensee of the facility, including, but not limited to, Eddie Lee Spencer, Sr.'s medical expenses, pain and suffering, hospitalizations, mental anguish, degradation, disability, disfigurement, emotional distress, and loss of personal dignity, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus all other relief to which Plaintiff is entitled by law.

74. The infringement or deprivation of the resident's rights of Eddie Lee Spencer, Sr. by Defendants was willful, wanton, gross, flagrant, reckless, or consciously indifferent. Pursuant to Ark. Code Ann. § 20-10-1209(c), Plaintiff is entitled to recover punitive damages against the licensee of the facility.

CAUSE OF ACTION AGAINST ADMINISTRATOR DEFENDANT

FACTUAL ALLEGATIONS

76. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1 – 28 as if fully set forth herein.

77. Upon information and belief, Vickey Kirkemier was an Administrator at Salem Place Nursing and Rehabilitation Center, Inc. during the residency of Eddie Lee Spencer, Sr.

78. As an Administrator of the facility, Vickey Kirkemier had a duty to administrate the facility in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychological well-being of each resident. The nursing facility, under the leadership of its administrator, is also required to operate and provide services in compliance with accepted professional and industry standards and principles that apply to professionals providing services in such facilities. Administrator Defendant breached her duties of care to Eddie Lee Spencer, Sr.

COUNT ONE

NEGLIGENCE

79. Plaintiff re-alleges and incorporates the allegations in Paragraphs 1 – 28 and 77 - 78 as if fully set forth herein.

80. Administrator Defendant owed duties to the residents, including Eddie Lee Spencer, Sr., to provide services as a reasonable administrator within accepted standards for a nursing home administrator.

81. Administrator Defendant breached the duties owed to the residents of the facility, including Eddie Lee Spencer, Sr., by failing to supervise nurses and nurses' aides and failing to hire sufficient nurses and nurses' aides, and as such, the nurses and nurses' aides were unable to provide Eddie Lee Spencer, Sr. the care he required.

The negligence of the Administrator Defendant includes, but is not limited to, the following acts and omissions:

- a) Failure to adequately assess, evaluate, and supervise nursing personnel to ensure that Eddie Lee Spencer, Sr. received appropriate nursing care;
- b) Failure to adequately screen, evaluate, and test for competence in selecting personnel to work at the facility;
- c) Failure to ensure that Eddie Lee Spencer, Sr. attained and maintained his highest level of physical, mental, and psychosocial well-being;
- d) Failure to ensure that Eddie Lee Spencer, Sr. was provided proper supervision and intervention to prevent falls;
- e) Failure to ensure that Eddie Lee Spencer, Sr. was provided sufficient amounts of fluids to prevent dehydration and infections;
- f) Failure to ensure that Eddie Lee Spencer, Sr. received adequate nutrition to prevent malnourishment;
- g) Failure to ensure that Eddie Lee Spencer, Sr. was assessed, monitored and treated for the signs and symptoms of infections;
- h) Failure to provide a sanitary environment;
- i) Failure to ensure that Eddie Lee Spencer, Sr. received care, treatment, and medication as prescribed or in accordance with physician's orders;
- j) Failure to ensure that Eddie Lee Spencer, Sr. was treated with the dignity and respect that all nursing home residents are entitled to receive;
- k) Failure to provide a safe environment for Eddie Lee Spencer, Sr.;
- l) Failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at the facility;

- m) Failure to:
 - 1) investigate the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at the facility by the Office of Long Term Care or any other authority;
 - 2) determine the cause of any such deficiencies, violations, or penalties;
 - 3) establish the method and means for correcting deficiencies or licensure violations or penalties found to exist at the facility;
 - 4) determine whether the facility had sufficient numbers of personnel to meet the total needs of Eddie Lee Spencer, Sr.; and
 - 5) document, maintain files, investigate, and respond to any complaint regarding the quality of resident care, or misconduct by employees at the facility, regardless of whether such complaint derived from a resident of said facility, an employee of the facility, or any interested person;
- n) Failure to ensure that Eddie Lee Spencer, Sr. was provided with basic and necessary care and supervision;
- o) Failure to adequately hire, train, supervise and retain a sufficient amount of competent and qualified registered nurses, licensed vocational nurses, nurse assistants and other personnel in said facility to assure that Eddie Lee Spencer, Sr. received care, treatment, and services in accordance with duties owed, and industry and community standards and practices;
- p) Failure to assign nursing personnel at the facility duties consistent with their education and experience based on:
 - 1) Eddie Lee Spencer, Sr.'s medical history and condition, and his nursing and rehabilitative needs;
 - 2) the characteristics of the resident population residing in the area of the facility where Eddie Lee Spencer, Sr. was a resident; and
 - 3) nursing skills needed to provide care to such resident population;

- q) Failure to provide sufficient numbers of qualified personnel, to ensure that Eddie Lee Spencer, Sr. was provided with a safe environment, received timely and accurate care assessments, received prescribed treatment, medication and diet, and was protected from abuse, mistreatment and accidental injuries by the correct use of reasonable safety measures;
- r) Failure to properly in-service and orient employees to pertinent resident care needs to maintain the safety of residents;
- s) Failure to protect Eddie Lee Spencer, Sr. from abuse and neglect;
- t) Failure to provide adequate supervision to the nursing staff to ensure that Eddie Lee Spencer, Sr. received adequate and proper care;
- u) Failure to provide nursing personnel sufficient in number to provide proper treatment and assessment to protect the skin integrity of residents, including Eddie Lee Spencer, Sr.;
- v) Failure to document and maintain all records on Eddie Lee Spencer, Sr. in accordance with accepted professional standards and practice that were complete, accurately documented, readily accessible, and systematically organized with respect to his diagnosis, treatment, and appropriate care plans of care and treatment; and
- w) Failure to administer the facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of Eddie Lee Spencer, Sr.

82. 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 Eddie Lee Spencer, Sr.

83. As a direct and proximate result of Administrator Defendant's negligent conduct, Plaintiff asserts a claim for judgment for all compensatory damages against Administrator Defendant including, but not limited to, Eddie Lee Spencer, Sr.'s necessary medical care, treatment and services incurred in the past and reasonably certain to be experienced in the future, pain and suffering and mental anguish

experienced in the past and reasonably certain to be experienced in the future, degradation, disability, disfigurement, emotional distress, and loss of personal dignity, in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court, and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus all other relief to which Plaintiff is entitled by law.

CAUSES OF ACTION AGAINST ALL DEFENDANTS

DAMAGES

84. Plaintiff re-alleges and incorporates the allegations in Paragraphs 1 – 83 as if fully set forth herein.

85. As a direct and proximate result of the negligence of Defendants as set out above, Eddie Lee Spencer, Sr. suffered injuries including, but not limited to, those listed herein. As a result, Eddie Lee Spencer, Sr. incurred necessary medical care, treatment and services in the past and reasonably certain to be experienced in the future, pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future, degradation, disability, disfigurement, emotional distress and loss of personal dignity, for which Plaintiff is entitled to recover compensatory and punitive damages.

86. Plaintiff seeks punitive and compensatory damages against Defendants in an amount to be determined by the jury, but in excess of the minimum jurisdictional limits of this Court and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus costs and all other relief to which Plaintiff is entitled.

DEMAND FOR JURY TRIAL

87. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

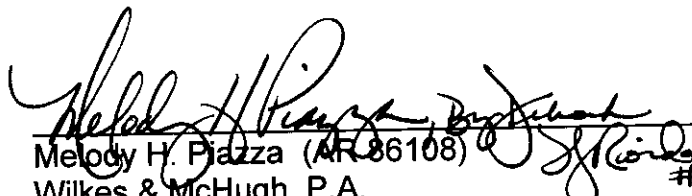
WHEREFORE, Plaintiff, Gary G. Spencer, as Guardian of the Person and Estate of Eddie Lee Spencer, Sr., an incapacitated person, prays for judgment against Defendants as follows:

1. For damages in an amount adequate to compensate Plaintiff for the injuries and damages Eddie Lee Spencer, Sr. sustained.
2. For all general and special damages caused by the alleged conduct of Defendants.
3. For punitive damages sufficient to punish Defendants for their egregious and malicious misconduct in reckless disregard and conscious indifference to the consequences to Eddie Lee Spencer, Sr., and to deter Defendants and others from repeating such atrocities.
4. For all other relief to which Plaintiff is entitled.

Respectfully submitted,

Gary G. Spencer, as Guardian of the Person
and Estate of Eddie Lee Spencer, Sr., an
incapacitated person

By:


Melody H. Piazza (AR 86108) #93231
Wilkes & McHugh, P.A.
One Information Way, Suite 300
Little Rock, Arkansas 72202
Telephone: (501) 371-9903
Facsimile: (501) 371-9905

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
16th PROBATE DIVISION

IN THE MATTER OF EDDIE LEE SPENCER, SR.,
An Incapacitated Person

No. 60PR-2013-1088

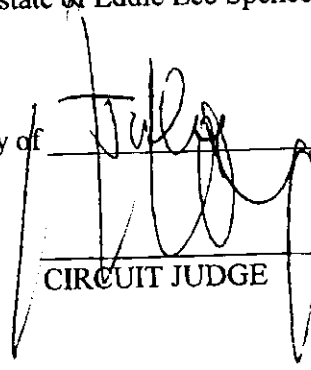
**ORDER APPOINTING
GUARDIAN OF THE PERSON AND ESTATE**

On this day there is presented to the Court the Petition of Gary G. Spencer for appointment as guardian of the person and estate of Eddie Lee Spencer, Sr., an incapacitated person, and upon consideration of such petition, and the facts and evidence in support thereof, the Court finds:

1. This Court has jurisdiction and venue properly lies in this county.
2. Eddie Lee Spencer, Sr. is an incapacitated person by reason of physical and mental impairment.
3. Gary G. Spencer is a proper person and is fully qualified by law to serve as the Guardian of the person and estate of Eddie Lee Spencer, Sr.
4. That the ward has no assets, and bond, therefore, is waived at this time. The Court will revisit the issue of bond should the ward acquire assets at any time.

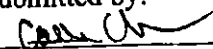
It is therefore by the Court CONSIDERED and ORDERED that Gary G. Spencer be and hereby is, appointed Guardian of the person and estate of Eddie Lee Spencer, Sr., to serve without bond.

IT IS SO ORDERED this 22ND day of July, 2013.



CIRCUIT JUDGE

Submitted by:



Catherine C. Lewis, Bar #99079
HUMPHRIES & LEWIS
P. O. Box 20670
White Hall, AR 71612
Telephone No. (870) 247-7035



IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
~~16~~ PROBATE DIVISION

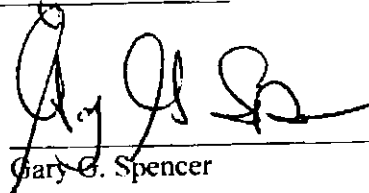
IN THE MATTER OF EDDIE LEE SPENCER, SR.,
An Incapacitated Person

No. 60PR-2013-~~1087~~

ACCEPTANCE OF APPOINTMENT AS GUARDIAN

The undersigned, Gary G. Spencer, having been appointed guardian of the person and estate of Eddie Lee Spencer, Sr., hereby accepts the appointment.

Dated this 22nd day of July, 2013.



Gary G. Spencer

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
PROBATE DIVISION

No. 60PR-13-1088

IN THE MATTER OF THE ESTATE OF EDDIE LEE SPENCER SR
an incapacitated person.

LETTERS OF GUARDIANSHIP OF THE PERSON AND ESTATE

BE IT KNOWN:

THAT GARY G SPENCER, whose address is 1205 Oakdale St, Lonoke, AR 72065,
having been duly appointed guardian of the person and estate of EDDIE LEE
SPENCER, and having qualified as guardian, is hereby authorized to have the care and
custody of and exercise control over the person and to take possession of and administer
the property of incapacitated person, as authorized by law.

ISSUED this date: 22-JUL-2013

LARRY CRANE, CIRCUIT CLERK



By: KURT G SCHWARZNAU, PULASKI COURT REC

