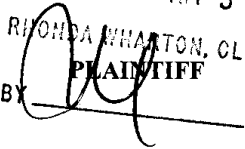


IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS  
SECOND DIVISION

FILED

GARY G. SPENCER, AS GUARDIAN OF THE  
PERSON AND ESATE OF EDDIE LEE  
SPENCER, SR., AN INCAPACITATED PERSON

2013 SEP 13 AM 9 32  
RHONDA WHARTON, CLERK  
PLAINTIFF  
BY  DC

V. CASE NO. 23CV-13-642

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 VICKIE  
KIRKEMIER, IN HER CAPACITY AS ADMINISTRATOR  
OF SALEM PLACE NURSING AND REHABILITATION  
CENTER, INC.

  
23CV-13-642 231-23100006136-077  
GARY G SPENCER ET AL V SALE 18 Pages  
FAULKNER CO 09/13/2013 09:32 AM  
CIRCUIT COURT AF10

DEFENDANTS

ANSWER TO COMPLAINT

Come now the Defendants, Salem Place Nursing and Rehabilitation Center, Inc.; Central Arkansas Nursing Centers, Inc. ("CANC"); Nursing Consultants, Inc. ("NCI"); Salem Place Nursing Center, Inc.; Michael S. Morton ("Mr. Morton"); and Vickey Kirkemier ("Ms. Kirkemier"), by and through their attorneys, Hardin, Jesson & Terry, PLC, and for their Answer to Plaintiff's Complaint, state as follows:

1. Defendants admit that Exhibit A is attached to Plaintiff's Complaint and that it speaks for itself. To the extent the allegations contained in Paragraph 1 of Plaintiff's Complaint are inconsistent with the language within Exhibit A, those allegations are denied. The remaining allegations contained in Paragraph 1 fail to state a claim against Defendants pursuant to Rule 8 of the Arkansas Rules of Civil Procedure and, therefore, no response is required by Defendants. To

the extent a response is required, those allegations are denied. Defendants deny that Plaintiff is entitled to any relief.

2. Upon information and belief, Defendants admit the allegations set forth in Paragraph 2 of Plaintiff's Complaint.

3. Mr. Spencer's facility chart and medical records best reflect his dates of residency in the Salem Place facility, any intervening hospitalizations, and his date of discharge. To the extent the allegations contained in Paragraph 3 of Plaintiff's Complaint are inconsistent with those documents, the allegations are denied.

4. Defendant Salem Place Nursing and Rehabilitation Center, Inc. admits the allegations contained in the first, second, and fourth sentences of Paragraph 4 of Plaintiff's Complaint. Separate Defendant denies the remaining allegations in this paragraph.

5. CANC admits that it is an Arkansas, for-profit corporation, that its agent for service of process is Kirkman T. Dougherty, and that it provided administrative services, including billing and accounting services, to Salem Place Nursing and Rehabilitation Center, Inc. pursuant to an Administrative Services Agreement. It further admits that it provides similar administrative services to other long-term care facilities in Arkansas, Oklahoma, and Missouri. CANC denies the remaining allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. NCI admits that it is an Arkansas, for-profit corporation, that its agent for service of process is Kirkman T. Dougherty, and that it provided certain nurse consultant and other consulting services to Salem Place Nursing and Rehabilitation Center, Inc. during Mr. Spencer's residency period. NCI denies the remaining allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. Salem Place Nursing Center, Inc. admits that it is an Arkansas, for-profit corporation, that its agent for service of process is Kirkman T. Dougherty, and that it leased the property on which Salem Place Nursing and Rehabilitation Center, Inc. was located during Mr. Spencer's residency period to Salem Place Nursing and Rehabilitation Center, Inc. Salem Place Nursing Center, Inc. denies the remaining allegations in Paragraph 7 of Plaintiff's Complaint.

8. Separate Defendant Mr. Morton admits that he is a shareholder in other Defendants in this case and that he served as an officer of Salem Place Nursing and Rehabilitation Center, Inc. during Mr. Spencer's residency period. He further admits that he may be served with process at the address listed. He denies the remaining allegations in Paragraph 8 of Plaintiff's Complaint.

9. Separate Defendant Ms. Kirkemier admits the allegations in the first and third sentences of Paragraph 9 of Plaintiff's Complaint. She denies the remaining allegations in this paragraph.

10. Paragraph 10 of Plaintiff's Complaint fails to state facts against Defendants as required by Rule 8 of the Arkansas Rules of Civil Procedure and, therefore, no response is required from Defendants. To the extent Paragraph 10 is construed to state facts as against Defendants, those allegations are denied.

11. Paragraph 11 of Plaintiff's Complaint fails to state facts against Defendants as required by Rule 8 of the Arkansas Rules of Civil Procedure and, therefore, no response is required from Defendants. To the extent Paragraph 11 is construed to state facts as against Defendants, those allegations are denied.

12. Paragraph 12 of Plaintiff's Complaint fails to state facts against Defendants as required by Rule 8 of the Arkansas Rules of Civil Procedure and, therefore, no response is

required from Defendants. To the extent Paragraph 12 is construed to state facts as against Defendants, those allegations are denied.

13. Defendants have no objection to jurisdiction or venue in this Court.

14. Mr. Spencer's facility chart and medical records best reflect his dates of residency in the facility, his intervening hospitalizations, and his date of discharge. To the extent the allegations contained in Paragraph 14 of Plaintiff's Complaint are inconsistent with those allegations, these allegations are denied. Defendants are without sufficient information or knowledge to admit or deny the allegations concerning Mr. Spencer's current place of residence.

15. The allegations contained in Paragraph 15 of Plaintiff's Complaint are denied.

16. The allegations contained in Paragraph 16 of Plaintiff's Complaint are denied.

17. Defendants admit that Salem Place Nursing and Rehabilitation Center, Inc. is certified for participation in the Medicaid-Medicare program, and is, therefore, required to comply with certain federal regulations applicable to such certification. Defendants further admit that Salem Place Nursing and Rehabilitation Center, Inc. complied with applicable state and federal laws and regulations pertaining to the skilled nursing care and assisted living care provided in the nursing home facility. The remaining allegations contained in Paragraph 17, including sub-parts (a) through (d) of Plaintiff's Complaint, consist of legal conclusions and arguments of counsel to which no responsive pleading is required. To the extent that any additional responsive pleading may be required, the allegations are denied.

18. In response to the allegations contained in Paragraph 18 of Plaintiff's Complaint, Defendants admit that the Office of Long Term Care conducted surveys at Salem Place Nursing and Rehabilitation Center, Inc. The surveys speak for themselves, and to the extent the allegations contained in Paragraph 18 of Plaintiff's Complaint are inconsistent with the surveys,

those allegations are denied. The remaining allegations contained in Paragraph 18 of Plaintiff's Complaint, including sub-parts (a) through (f), are denied.

19. The allegations contained in Paragraph 19 of Plaintiff's Complaint are denied.

20. The allegations contained in Paragraph 20 of Plaintiff's Complaint are denied.

21. The allegations contained in Paragraph 21 of Plaintiff's Complaint, including sub-parts (a) through (o), are denied.

22. The allegations contained in Paragraph 22 of Plaintiff's Complaint are denied.

23. The allegations contained in Paragraph 23 of Plaintiff's Complaint are denied.

24. The allegations contained in Paragraph 24 of Plaintiff's Complaint are denied.

25. The allegations contained in Paragraph 25 of Plaintiff's Complaint are denied.

26. The allegations contained in Paragraph 26 of Plaintiff's Complaint are denied.

27. The allegations contained in Paragraph 27 of Plaintiff's Complaint are denied.

28. The allegations contained in Paragraph 28 of Plaintiff's Complaint are denied.

29. With respect to the allegations contained in Paragraph 29 of Plaintiff's Complaint, Defendants incorporate by this reference all allegations and denials previously set forth in this Answer.

30. The allegations contained in Paragraph 30 of Plaintiff's Complaint are denied.

31. The allegations contained in Paragraph 31 of Plaintiff's Complaint are denied.

32. The allegations contained in Paragraph 32 of Plaintiff's Complaint are denied.

33. The allegations contained in Paragraph 33 of Plaintiff's Complaint, including sub-parts (a) through (y), are denied.

34. The allegations contained in Paragraph 34 of Plaintiff's Complaint are denied.

35. The allegations contained in Paragraph 35 of Plaintiff's Complaint, including subparts (a) through (h), are denied.

36. The allegations contained in Paragraph 36 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.

37. The allegations contained in Paragraph 37 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.

38. With respect to the allegations contained in Paragraph 38 of Plaintiff's Complaint, Defendants incorporate by this reference all allegations and denials previously set forth in this Answer.

39. The allegations contained in Paragraph 39 of Plaintiff's Complaint are denied.

40. The allegations contained in Paragraph 40 of Plaintiff's Complaint are denied.

41. The allegations contained in Paragraph 41 of Plaintiff's Complaint are denied.

42. The allegations contained in Paragraph 42 of Plaintiff's Complaint are denied.

43. The allegations contained in Paragraph 43 of Plaintiff's Complaint are denied.

44. The allegations contained in Paragraph 44 of Plaintiff's Complaint are denied.

45. The allegations contained in Paragraph 45 of Plaintiff's Complaint are denied.

46. The allegations contained in Paragraph 46 of Plaintiff's Complaint are denied.

47. The allegations contained in Paragraph 47 of Plaintiff's Complaint are denied.

48. The allegations contained in Paragraph 48 of Plaintiff's Complaint are denied.

49. The allegations contained in Paragraph 49 of Plaintiff's Complaint are denied.

50. The allegations contained in Paragraph 50 of Plaintiff's Complaint are denied, including subparts (a) through (r).

51. The allegations contained in Paragraph 51 of Plaintiff's Complaint are denied.

52. The allegations contained in Paragraph 52 of Plaintiff's Complaint are denied, including subparts (a) through (h).

53. The allegations contained in Paragraph 53 of Plaintiff's Complaint are denied.

54. The allegations contained in Paragraph 54 of Plaintiff's Complaint are denied.

55. The allegations contained in Paragraph 55 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.

56. The allegations contained in Paragraph 56 of Plaintiff's Complaint are denied.

57. The allegations contained in Paragraph 57 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.

58. With respect to the allegations contained in Paragraph 58 of Plaintiff's Complaint, Defendants incorporate by this reference all allegations and denials previously set forth in this Answer.

59. Separate Defendant Salem Place Nursing and Rehabilitation Center, Inc. admits that it is a medical care provider as defined by the Arkansas Medical Malpractice Act. The allegations contained in Paragraph 59 of Plaintiff's Complaint are denied as to the remaining defendants.

60. Defendants deny the allegations contained in Paragraph 60 of Plaintiff's Complaint.

61. Defendants deny the allegations contained in Paragraph 61 of Plaintiff's Complaint.

62. The allegations contained in Paragraph 62 of Plaintiff's Complaint are denied, including subparts (a) through (n).

63. The allegations contained in Paragraph 63 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.

64. The allegations contained in Paragraph 64 of Plaintiff's Complaint are denied.

65. The allegations contained in Paragraph 65 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.

66. With respect to the allegations contained in Paragraph 66 of Plaintiff's Complaint, Defendants incorporate by this reference all allegations and denials previously set forth in this Answer.

67. The allegations contained in Paragraph 67 of Plaintiff's Complaint consist of legal conclusions and arguments of counsel to which no responsive pleading is required. To the extent that any responsive pleading may be required, the allegations are denied.

68. The allegations contained in Paragraph 68 of Plaintiff's Complaint consist of legal conclusions and arguments of counsel to which no responsive pleading is required. To the extent that any responsive pleading may be required, the allegations are denied.

69. The allegations contained in Paragraph 69 of Plaintiff's Complaint are denied.

70. The allegations contained in Paragraph 70 of Plaintiff's Complaint are denied.

71. The allegations contained in Paragraph 71 of Plaintiff's Complaint are denied, including subparts (a) through (m).

72. The allegations contained in Paragraph 72 of Plaintiff's Complaint are denied.

73. The allegations contained in Paragraph 73 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.

74. The allegations contained in Paragraph 74 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.



75. There is no Paragraph 75 in Plaintiff's Complaint.

76. With respect to the allegations contained in Paragraph 76 of Plaintiff's Complaint, Defendants incorporate by this reference all allegations and denials previously set forth in this Answer.

77. Separate Defendant Ms. Kirkemier admits the allegations contained in Paragraph 77 of Plaintiff's Complaint. As for the remaining defendants, the allegations contained in Paragraph 77 of Plaintiff's Complaint are directed to another Defendant in this matter and, therefore, no response is required of these Defendants. To the extent that any responsive pleading may be required, the allegations are denied.

78. Separate Defendant Ms. Kirkemier asserts that the allegations in the first two sentences of Paragraph 78 of Plaintiff's Complaint consist of legal conclusions and arguments of counsel to which no responsive pleading is required. To the extent that any responsive pleading may be required, the allegations are denied. Ms. Kirkemier denies the remaining allegations in this paragraph. As for the remaining defendants, the allegations contained in Paragraph 78 of Plaintiff's Complaint are directed to another Defendant in this matter and, therefore, no response is required of these Defendants. To the extent that any responsive pleading may be required, the allegations are denied.

79. With respect to the allegations contained in Paragraph 79 of Plaintiff's Complaint, Defendants incorporate by this reference all allegations and denials previously set forth in this Answer.

80. Separate Defendant Ms. Kirkemier asserts that the allegations contained in Paragraph 80 of Plaintiff's Complaint consist of legal conclusions and arguments of counsel to which no responsive pleading is required. To the extent that any responsive pleading may be

required, the allegations are denied. As for the remaining defendants, the allegations contained in Paragraph 80 of Plaintiff's Complaint are directed to another Defendant in this matter and, therefore, no response is required of these Defendants. To the extent that any responsive pleading may be required, the allegations are denied.

81. Separate Defendant Ms. Kirkemier denies the allegations contained in Paragraph 81 of Plaintiff's Complaint, including sub-parts (a) through (w). As for the remaining defendants, the allegations contained in Paragraph 81 of Plaintiff's Complaint, including sub-parts (a) through (w), are directed to another Defendant in this matter and, therefore, no response is required of these Defendants. To the extent that any responsive pleading may be required, the allegations are denied.

82. Separate Defendant Ms. Kirkemier denies the allegations contained in Paragraph 82 of Plaintiff's Complaint. As for the remaining defendants, the allegations contained in Paragraph 82 of Plaintiff's Complaint are directed to another Defendant in this matter and, therefore, no response is required of these Defendants. To the extent that any responsive pleading may be required, the allegations are denied.

83. Separate Defendant Ms. Kirkemier denies the allegations contained in Paragraph 83 of Plaintiff's Complaint. Ms. Kirkemier further denies that Plaintiff is entitled to the relief sought in this paragraph. As for the remaining defendants, the allegations contained in Paragraph 83 of Plaintiff's Complaint are directed to another Defendant in this matter and, therefore, no response is required of these Defendants. To the extent that any responsive pleading may be required, the allegations are denied.

84. With respect to the allegations contained in Paragraph 84 of Plaintiff's Complaint, Defendants incorporate by this reference all allegations and denials previously set forth in this Answer.

85. The allegations contained in Paragraph 85 of Plaintiff's Complaint are denied. Defendants further deny that Plaintiff is entitled to the relief sought in this paragraph.

86. Defendants deny that Plaintiffs are entitled to the relief sought in Paragraph 86 of Plaintiff's Complaint.

87. Defendants join in Plaintiff's demand for a trial by jury.

88. All allegations contained in the WHEREFORE or Prayer for Relief paragraph of Plaintiff's Complaint are denied, including subparts (1) through (4).

89. Defendants deny that they were negligent in any respect. Additionally, Defendants deny all allegations contained in Plaintiff's Complaint that are not specifically admitted herein.

90. Defendants deny that Plaintiff is entitled to any damages.

91. Defendants affirmatively assert the right to plead further, including reservation of all affirmative defenses allowed under Arkansas law which are required to be pled in the initial pleading and all third party claims which may be appropriate.

92. Pleading further, and in the affirmative, Defendants assert the defenses of statute of limitation, insufficiency of service, insufficiency of process, comparative negligence, intervening cause, Act of God, waiver, estoppel, laches and negligence or intentional acts of third parties over whom these Defendants exercise no dominion or control as complete and/or partial bars to any recovery by the Plaintiff herein. Defendants further state in the affirmative that all of Plaintiff's claims are subsumed by the Arkansas Medical Malpractice Act.

93. Defendants affirmatively assert that Plaintiff's claims are barred, in whole or in part, because any damages allegedly suffered were not proximately caused by Defendants' conduct.

94. Defendants affirmatively plead that Plaintiff's Complaint fails to state facts sufficient to justify an award of punitive damages.

95. Defendants affirmatively plead and assert that any claim for punitive damages is pre-empted by the federal statutory and regulatory scheme related to nursing homes.

96. Defendants affirmatively plead that Plaintiff's claim for punitive damages cannot be sustained because an award of punitive damages under Arkansas law by a jury does not provide constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award.

97. Defendants affirmatively plead that Plaintiff's claim for punitive damages against all or any of these Defendants is barred, in whole or in part, because an award of punitive damages under Arkansas law would violate the Defendants' due process rights and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, & 8 of the Arkansas Constitution.

98. Defendants affirmatively plead that Plaintiff's claim for punitive damages cannot be sustained because Arkansas law regarding the standards for determining liability for and the amount of punitive damages fail to give the Defendants prior notice of the conduct for which punitive damages may be imposed, and the severity of the penalty that may be imposed, and are void for vagueness in violation of these Defendants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution.

99. Defendants affirmatively assert that Plaintiff's claims for punitive damages against these Defendants cannot be sustained, because an award of punitive damages under Arkansas law, subject to no predetermined limit, such as a maximum multiple of compensatory damages, or a maximum amount on the amount of punitive damages that may be imposed, would violate these Defendants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution.

100. Defendants affirmatively plead that Plaintiff's claims for punitive damages against these Defendants cannot be sustained, because an award of punitive damages under Arkansas law which allows Plaintiff to prejudicially emphasize the corporate status of any of these Defendants violates such Defendants' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution, and would be improper under the common law and public policy of Arkansas.

101. Defendants affirmatively assert that Plaintiff's claim for punitive damages against these Defendants cannot be sustained because any award of punitive damages made under a process which fails to bifurcate the issue of punitive damages from the remaining issues would violate the Defendants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 2, 3, and 8 of the Arkansas Constitution, and would be improper under the common law and public policy of Arkansas.

102. Defendants affirmatively assert that Plaintiff's claim for punitive damages cannot be sustained because an award of punitive damages under Arkansas law by a jury that (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate

imposition of, and the appropriate size of, a punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award for punitive damages, in whole or in part on the basis of invidiously discriminatory characteristics, including without limitation the residence, wealth and corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, (5) is not properly instructed regarding Plaintiff's burden of proof with respect to each and every element of a claim for punitive damages, and (6) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards. This would violate Defendants' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and Article II, Sections 2, 3 and 8 of the Arkansas Constitution, and would be improper under the common law and public policy of Arkansas.

103. Plaintiff's claim for punitive damages against Defendants cannot be sustained, because an award of punitive damages in this case, combined with any prior, contemporaneous, or subsequent judgments against Defendants for punitive damages, would constitute impermissible multiple punishments in violation of Defendants' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Article II, Sections 2, 3 and 8 of the Arkansas Constitution.

104. Defendants affirmatively assert that the claims against them fail to state a cause of action upon which relief can be granted and they should be dismissed as a matter of law.

105. Defendants affirmatively assert that Plaintiff's claims of negligence and violation of the Arkansas Residents' Rights Act should be dismissed pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure for failure to state facts upon which relief can be granted. Defendants also affirmatively assert that these claims are superseded by the statutory scheme set forth in the Arkansas Medical Malpractice Act. Defendants further affirmatively assert that Arkansas Code Annotated § 20-10-1201 *et seq.* does not create an individual enforceable right to any minimum staffing requirements.

106. Separate Defendants Central Arkansas Nursing Centers, Inc., Nursing Consultants, Inc., Salem Place Nursing Center, Inc., Michael S. Morton, and Vickey Kirkemier affirmatively assert that Plaintiff's claims for alleged violations of Arkansas Code Annotated § 20-10-1201 *et seq.* should be dismissed pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure for failure to state facts upon which relief can be granted. Defendants affirmatively assert that only a licensee may be liable for violations of Arkansas Code Annotated § 20-10-1201 *et seq.*

107. Separate Defendants Central Arkansas Nursing Centers, Inc., Nursing Consultants, Inc., Salem Place Nursing Center, Inc., Michael S. Morton, and Vickey Kirkemier affirmatively assert that Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure for failure to state facts upon which relief can be granted. Those Defendants affirmatively assert that Plaintiff fails to allege actionable conduct, vicarious liability, alter ego, or conspiracy liability sufficient to state of cause of action against them.

108. Defendants deny that their conduct was grossly negligent, flagrant, willful, wanton, reckless, malicious, intentional, or conducted with conscious indifference to the rights of any resident, including Mr. Spencer.

109. Separate Defendants Central Arkansas Nursing Centers, Inc., Salem Place Nursing Center, Inc., and Michael S. Morton affirmatively assert that Plaintiff's claims of medical negligence as against them should be dismissed pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure for failure to state facts upon which relief can be granted, as they are not medical care providers under the Act. Separate Defendant Nursing Consultants, Inc. affirmatively asserts that these claims should be dismissed as against it because it did not provide medical care to Mr. Spencer, as required by the Act.

110. Separate Defendant Salem Place Nursing Center, Inc. should be dismissed from this action as it did not hold the license to operate, operate, manage, control, or in any way direct the day-to-day or overall operations of Salem Place Nursing and Rehabilitation Center, Inc. during the residency period of Mr. Spencer. Accordingly, dismissal is proper for failure to state a claim pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

111. Plaintiff's claim of negligence against Separate Defendant Michael Morton should be dismissed as he did not operate, manage, control or direct the day-to-day operations of Salem Place Nursing and Rehabilitation Center, Inc. during the residency period of Mr. Spencer, and Plaintiff's claims pursuant to capacity as owner or shareholder are insufficient to establish a claim for individual negligence. Accordingly, dismissal is proper for failure to state a claim pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure, and based upon the authority within *Scott v. Central Arkansas Nursing Centers, Inc.*, 101 Ark. App. 424, 278 S.W.3d 587 (2008); *Bayird v. Floyd*, 2009 Ark. 455, 344 S.W.3d 80 (2009); *Bedell v. Williams*, 2012 Ark. 75, 2012 WL 579447; and *Smith v. Heather Manor Care Center, Inc., et al.*, 2012 Ark. App. 584 (Ark. App.), 2012 WL 5319834 (Ark.App.) *reh'g denied*.



112. Defendants affirmatively assert that Plaintiff's claim of negligence is drafted as a medical malpractice claim and is therefore superseded by the Arkansas Medical Malpractice Act and, accordingly, should be dismissed.

113. Defendants affirmatively assert that Plaintiff's claims for liability based upon theories of alter ego liability, vicarious liability, piercing the corporate veil, agency or any similar or related theories are without basis in fact or law, and should be dismissed as a matter of law.

WHEREFORE, Defendants pray that Plaintiff's Complaint be dismissed, for their costs herein expended, and for all other proper relief to which they are entitled.

Respectfully submitted,

HARDIN, JESSON & TERRY, PLC  
Attorneys at Law  
P. O. Box 10127  
Fort Smith, AR 72917-0127  
(479) 452-2200

By:



Kirkman T. Dougherty  
Arkansas Bar No. 91133

Stephanie I. Randall  
Arkansas Bar No. 2000124

Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I, Stephanie I. Randall, one of the attorneys for the Defendants herein, do hereby certify that a true and correct copy of the above and foregoing pleading has been served upon the Plaintiff by depositing a copy of the same in the United States Postal Mail Service, postage prepaid, addressed to:

Ms. Melody H. Piazza  
**WILKES & MCHUGH, P.A.**  
One Information Way, Suite 300  
Little Rock, Arkansas 72202

on this 12<sup>th</sup> day of September, 2013.

  
Stephanie I. Randall