

2012 WL 12055383 (Ark.Cir.) (Trial Pleading)  
Circuit Court of Arkansas.  
Pulaski County

Leveda S. MCGEE, et al.,  
v.  
ALL-AMERICAN CARE CENTERS, INC., et al.

No. CV2012001271.  
March 30, 2012.

### **Amended Complaint**

Leveda S. McGee, as Administratrix of the Estate of Herley Landrum, Deceased, and on behalf of the wrongful death beneficiaries of Herley Landrum, [Brian D. Reddick](#) (AR 94057), [Brent L. Moss](#) (AR 95075), Reddick Moss, PLLC, One Information Way, Suite 201, Little Rock, Arkansas 72202, Telephone: (501) 907-7790, Facsimile: (501) 907-7793, for the plaintiff.

COMES NOW, the Plaintiff, Leveda S. McGee, as Administratrix of the Estate of Herley Landrum, deceased, and on behalf of the wrongful death beneficiaries of Herley Landrum, by and through her attorneys, Reddick Moss, PLLC and for her cause of action against Defendants All-American Care Centers, Inc. d/b/a All-American Care of Little Rock; Jerry L. Rhoads; Sharon K. Rhoads; Kip A. Rhoads; and Cathie Jones, states as follows:

### **JURISDICTIONAL STATEMENT**

1. Leveda McGee was appointed Administratrix of the Estate of Herley Landrum, deceased, on June 2, 2011, pursuant to an Order of the Pulaski County Circuit Court, Probate Division, Case No. 60PR-11-871, a copy of which is attached hereto as Exhibit A. Plaintiff brings this action on behalf of the Estate of Leveda McGee and on behalf of the wrongful death beneficiaries of Leveda McGee.
2. Leveda McGee is the daughter of Herley Landrum, sometimes referred to as “Hurley” Landrum.
3. Herley Landrum was a resident of All-American Care of Little Rock (sometimes referred to as “facility”), a nursing home located at 2600 John Barrow Road, Little Rock, Pulaski County, Arkansas from on or about June 15, 2010 until December 20, 2010.
4. Defendant All-American Care Centers, Inc. d/b/a All-American Care of Little Rock is a foreign corporation organized under the laws of the State of Illinois that owned, operated, managed, and held the license for the nursing home located at 2600 Barrow Road, Little Rock, Pulaski County, Arkansas known as All-American Care of Little Rock. The causes of action made the basis of this suit arise out of such business conducted by Defendant All-American Care Centers, Inc. d/b/a All-American Care of Little Rock in the ownership, operation, management, licensing and/or control of All-American Care of Little Rock during the residency of Herley Landrum. The agent for service of process for Defendant All-American Care Centers, Inc. d/b/a All-American Care of Little Rock is Debby Thetford Nye, 234 East Millsap Road, Suite 400, Fayetteville, Arkansas 72703.
5. Upon information and belief, Jerry L. Rhoads is a resident of the State of Illinois. At times material to this action, Jerry L. Rhoads was a member of the Governing Body of All-American Care of Little Rock and was a control person as defined in [Ark. Code Ann. § 4-88-113\(d\)\(1\)](#) and is therefore jointly and severally liable for the Plaintiff's damages. Jerry L. Rhoads' continuous

and systematic contacts with the State of Arkansas in general and the operations of All-American Care of Little Rock in specific render him subject to the personal jurisdiction of this Court pursuant to [Ark. Code Ann. § 16-4-101\(B\)](#). Jerry L. Rhoads may be served with process at his last known address at 2 Westwind Court, Hawthorn Woods, Illinois 60047.

6. Upon information and belief, Sharon K. Rhoads is a resident of the State of Illinois. At times material to this action, Sharon K. Rhoads was a member of the Governing Body of All-American Care of Little Rock and was a control person as defined in [Ark. Code Ann. § 4-88-113\(d\)\(1\)](#) and is therefore jointly and severally liable for the Plaintiff's damages. Sharon K. Rhoads' continuous and systematic contacts with the State of Arkansas in general and the operations of All-American Care of Little Rock in specific render her subject to the personal jurisdiction of this Court pursuant to [Ark. Code Ann. § 16-4-101\(B\)](#). Sharon K. Rhoads may be served with process at her last known address at 2 Westwind Court, Hawthorn Woods, Illinois 60047.

7. Upon information and belief, Kip A. Rhoads is a resident of the State of Illinois. At times material to this action, Kip A. Rhoads was a member of the Governing Body of All-American Care of Little Rock. Kip A. Rhoads' continuous and systematic contacts with the State of Arkansas in general and the operations of All-American Care of Little Rock in specific render him subject to the personal jurisdiction of this Court pursuant to [Ark. Code Ann. § 16-4-101\(B\)](#). Kip A. Rhoads may be served with process at his last known address at 6 Hickory Road, Oakwood Hills, Illinois 60013.

8. Upon information and belief, Defendant Cathie Jones was the administrator of All-American Care of Little Rock during the residency of Herley Landrum. The causes of action made the basis of this suit arise out of Ms. Jones' administration of All-American Care of Little Rock during the residency of Mr. Landrum. Defendant Cathie Jones may be served with process at her last known address: 17219 Elvin Road, Little Rock, Arkansas 72210.

9. Whenever the term "Nursing Home Defendants" is utilized herein, such term collectively refers to Advocat, Inc.; Diversicare Management Services Co.; Diversicare Leasing Corp. and Advocat Ancillary Services, Inc.

10. Whenever the term "Administrator Defendant" is utilized within this suit, such term refers to Cathie Jones.

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

12. Jurisdiction and venue are proper in this Court.

### **FACTUAL ALLEGATIONS**

13. Herley Landrum was admitted to All-American Care of Little Rock on June 15, 2010. With the exception of hospitalizations, Mr. Landrum remained a resident of the facility until December 20, 2010. He died on January 26, 2011 as a result of the injuries he sustained at the Defendants' facility.

14. Under state and federal law, the governing body of a nursing home is composed of individuals or a group in whom the ultimate authority and legal responsibility is vested for conduct of the nursing home. See Ark. Office of Long Term Care R. & Regs. § 100. All long-term care facilities must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility. See [42 C.F.R. § 483.75\(d\)\(1\)](#). The governing body has a legal duty to adopt effective patient care policies and administrative policies and by-laws governing the operation of the facility in accordance with legal requirements of state and federal law. See Ark. Office of Long Term Care R. & Regs. § 301.1. All-American Care Centers, Inc. identified Jerry L. Rhoads, Sharon K. Rhoads, and Kip A. Rhoads as members of the governing body of All-American Care who were legally responsible for appointing a qualified nursing home administrator and for establishing and implementing policies regarding management and operation of that facility. Defendants Jerry L. Rhoads, Sharon K. Rhoads, and Kip A. Rhoads, as members of the governing

body of All-American Care of Little Rock, were charged with ultimate authority and legal responsibility for the conduct of that nursing home.

15. Defendants were aware of Herley Landrum's medical conditions and the care he required when they represented that the facility could adequately care for his needs.

16. In an effort to ensure that Herley Landrum and other residents whose care was partially funded by the government were placed at All-American Care of Little Rock, 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 its nursing home residents;
- c) Able to specifically meet the total nursing home, medical and physical therapy needs of Mr. Landrum 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.

17. Defendants failed to discharge their obligations of care to Mr. Landrum with a conscious disregard for his rights and safety. At all times mentioned herein, Defendants, through corporate officers and administrators, had knowledge of, ratified and/or otherwise authorized all of the acts and omissions that caused the injuries suffered by Mr. Landrum, as more fully set forth below. Defendants knew that the facility could not provide the minimum standard of care to the weak and vulnerable residents of All-American Care of Little Rock. The severity of the recurrent negligence inflicted upon Mr. Landrum while under the care of the Defendants accelerated the deterioration of his health and physical condition and resulted in physical and emotional injuries. While a resident at All-American Care of Little Rock, Mr. Landrum suffered from injuries including, but not limited to:

- a) Leaking and infected feeding tube;
- b) Contractures;
- c) Dehydration;
- d) Severe malnutrition;
- e) Urinary tract infections;
- f) Anemia;
- g) Bacteremia;
- h) Sepsis and septic shock;
- i) Pain and suffering; and
- j) Death.

These injuries caused Mr. Mr. Landrum extreme pain and suffering, unnecessary medical treatments and hospitalizations, severe emotional distress, and eventually caused his death.

18. Defendants Jerry L. Rhoads; Sharon K. Rhoads and Kip A. Rhoads controlled the operation, planning, management and quality control of All-American Care of Little Rock. The authority exercised over the facility included, but was not limited to, budgeting, marketing, human resources management, training, staffing, creation and implementation of all policies and procedures of 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. Defendants Jerry L. Rhoads; Sharon K. Rhoads and Kip A. Rhoads are therefore control persons as defined by [Ark. Code Ann. § 4-88-113\(d\)\(1\)](#) and are jointly and severally liable for the Plaintiff's damages.

19. Separate Defendant Jerry Rhoads testified in another matter, for example, that he had the "right" and "obligation" to hold his medical director "accountable" for violations of the facility's policies and procedures, up to and including firing him. The Rhoads Defendants borrowed heavily against All-American Care of Little Rock, up to approximately \$1.7 million in personally guaranteed promissory notes. Jerry Rhoads testified in another matter that the facility had a "troubled past" and that the corporate leadership borrowed against the facility because "it was not in good shape. It had odors. It had a bad reputation." Jerry Rhoads admitted that, when they purchased the facility, All-American Care Centers, Inc. "took on probably more than we could chew in that period of time that we had to do it." All-American Care of Little Rock was in dire **financial** straits, and the Defendants placed the facility's **financial** position over resident care, and resident care naturally suffered as a result.

20. Defendants operated and managed All-American Care of Little Rock so as to maximize profits by reducing staffing levels below that which was 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 its actions caused staffing levels at the facility to be set so that the personnel on duty at any given time could not reasonably meet the needs of the residents. These acts of malfeasance caused injury to Herley Landrum and other residents of All-American of Care of Little Rock and were known to the Defendants. Defendants were on notice of numerous care problems that existed at the facility before and during Herley Landrum's residency.

21. Plaintiff alleges that, during his residency at All-American Care of Little Rock, Herley Landrum was under the care, supervision and treatment of Defendants and that the injuries complained of were proximately caused by the acts and omissions of the Defendants.

22. 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 Herley Landrum.

#### **COUNT ONE: NEGLIGENCE**

23. Plaintiff incorporates all of the allegations contained in Paragraphs 1-22 as if fully set forth herein.

24. Defendant All-American Care Centers, Inc. owed a non-delegable duty to residents, including Herley Landrum, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

25. Defendant All-American Care Centers, Inc. owed a non-delegable duty to residents, including Mr. Landrum, to hire, train and supervise employees to deliver care and services to residents in a safe and beneficial manner.

26. Defendant All-American Care Centers, Inc. owed a non-delegable duty to residents, including Mr. Landrum, to use reasonable care in treating the facility's residents with the degree of skill and learning ordinarily possessed and used by nursing home facilities in the same or similar locality.

27. Defendant All-American Care Centers, Inc. owed a non-delegable duty to assist all residents, including Mr. Landrum, in attaining and maintaining the highest level of physical, mental and psychosocial well-being.

28. Defendant All-American Care Centers, Inc. breached these duties by failing to exercise reasonable care and by failing to prevent the mistreatment, **abuse** and neglect of Mr. Landrum. The negligence of the Defendant includes, but is not limited to, the following acts and omissions:

a) The failure to ensure that Mr. Landrum attained and maintained his highest level of physical, mental, and psychosocial well-being;

b) The 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 Mr. Landrum;

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

d) The failure to increase the number of nursing personnel to ensure that Mr. Landrum received timely and accurate care assessments, and proper treatment, medication and diet, including sufficient fluids;

e) The 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 Mr. Landrum throughout his residency;

f) The failure to increase the number of nursing personnel at the facility to ensure that Mr. Landrum:

1. Received timely and accurate care assessments;

2. Received proper treatment, medication, and diet; and

3. Was protected from injuries by the correct use of ordered and reasonable safety measures.

g) The failure to provide adequate supervision to the nursing staff to ensure that Mr. Landrum received adequate and proper nutrition, fluids, therapeutic diet, and sanitary care treatments;

h) The failure to terminate employees at the facility assigned to Mr. Landrum who were known to be careless, incompetent and unwilling to comply with the policies and procedures of the facility and the rules and regulations promulgated by the Arkansas Department of Human Services and the Office of Long Term Care;

i) The failure to assign nursing personnel at the facility duties consistent with their education and experience based on:

1. Mr. Landrum's medical history and condition, nursing and rehabilitative needs;

2. The characteristics of the resident population residing in the area of the facility where Mr. Landrum was a resident; and,

3. The nursing skills needed to provide care to such resident population.

j) The failure by the members of the governing body of the facility to discharge their legal and lawful obligation by ensuring that the rules and regulations designed to protect the health and safety of residents, such as Mr. Landrum, as promulgated by the Arkansas Department of Human Services and the Arkansas Office of Long Term Care, were consistently complied with on an ongoing basis and ensuring appropriate corrective measures were implemented to correct problems concerning inadequate resident care;

k) The 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;

l) The failure to maintain medical records on Mr. Landrum 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; and

m) The failure to properly in-service and orient employees to pertinent patient care needs to maintain the safety of residents.

29. 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 Mr. Landrum.

30. Defendant All-American Care Centers, Inc. further breached its duty of care to Mr. Landrum 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 comply with rules and regulations promulgated by the Arkansas Department of Human Services, Division of Social Services, Office of Long Term Care, pursuant to authority expressly conferred by Act 28 of 1979 ([Ark. Code Ann. § 20-10-202, et seq.](#)) and published in the Long Term Care (LTC) Provider Manual on April 8, 1984, and the supplements thereto, and federal minimum standards imposed by the United States Department of Health and Human Services;

b) By failing to provide the necessary care and services through sufficient numbers of nursing staff to attain or maintain the highest practicable, physical, mental and psychosocial well-being of Herley Landrum, in accordance with the comprehensive assessment and plan of care;

c) By failing to ensure a nursing care plan based on Mr. Landrum's diagnoses, 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;

d) By failing to review and revise Herley Landrum's nursing care plan when his needs changed;

e) By failing to provide a safe environment;

f) 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; and

g) By violating [Ark. Code Ann. §§ 5-28-101 and 5-28-103](#) by criminally **abusing** and neglecting Mr. Landrum and by failing to report that **abuse** in violation of the Adult and Long-Term Care Facility Resident Maltreatment Act, [Ark. Code §§ 12-12-1701, et seq.](#)

31. 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 Defendant were a proximate cause of Herley Landrum's injuries as more specifically described herein, which were all foreseeable. As a result, Mr. Landrum suffered personal injury including excruciating pain and suffering, and emotional distress, which caused his family to suffer more than normal grief upon his death. Plaintiff prays for compensatory damages against Defendant All-American Care Centers, Inc. for the wrongful death of Herley Landrum as well as funeral expenses and other related costs.

32. 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 Defendant including, but not limited to, medical expenses, pain and suffering, mental anguish, emotional distress and loss of life in an amount exceeding that required by federal court jurisdiction in diversity of citizenship cases, to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

### COUNT TWO: MEDICAL MALPRACTICE

33. Plaintiff incorporates all of the allegations contained in Paragraphs 1-32 as if fully set forth herein.

34. Defendant All-American Care Centers, Inc. owed a non-delegable duty to residents, including Herley Landrum, to use reasonable care in treating residents of All-American Care of Little Rock with the degree of skill and learning ordinarily possessed and used by nursing home facilities in the same or similar locality.

35. Defendant All-American Care Centers, Inc. owed a non-delegable duty to assist all residents, including Herley Landrum, in attaining and maintaining the highest level of physical, mental and psychosocial well-being.

36. Defendant All-American Care Centers, Inc. failed to meet the applicable standards of care and violated the duty of care it owed to Herley Landrum through mistreatment, **abuse** and neglect. Defendant failed to adequately supervise nurses and aides and failed to hire sufficient nurses and aides. As such, the employees were unable to provide Herley Landrum with the care and treatment he required, and negligent acts and omissions occurred as set forth herein. The medical negligence of Defendant includes, but is not limited to, the following acts and omissions:

a) The failure to ensure that Mr. Landrum received the following:

1. Timely and accurate care assessments;
2. Proper treatment, medication and diet;
3. Necessary supervision; and
4. Timely nursing and medical intervention due to a significant change in condition.

b) The failure to provide, implement, and ensure adequate nursing care plan revisions and modifications as the needs of Mr. Landrum changed;

c) The failure to provide, implement and ensure that an adequate nursing care plan for Mr. Landrum was created and followed by nursing personnel;

d) The failure to provide adequate care and treatment to Mr. Landrum; and

e) The failure to adequately and appropriately monitor Mr. Landrum and recognize significant changes in his health status.

37. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the necessary care and treatment as identified herein. Each of the foregoing acts of negligence on the part of Defendant was a proximate cause of Herley Landrum's injuries, which were all foreseeable. As a result, Mr. Landrum suffered personal injury, including excruciating pain and suffering, and emotional distress, which caused his family to suffer more than normal grief upon his death. Plaintiff prays for compensatory damages against Defendant for the wrongful death of Herley Landrum, including the grief suffered as well as funeral expenses and other related costs.

38. Defendant All-American Care Centers, Inc. was negligent and reckless in breaching the duties owed to Herley Landrum under the Medical Malpractice Act for the reasons specifically enumerated in this Complaint.

39. As a direct and proximate result of such grossly negligent, willful, wanton, reckless, malicious, and/or intentional conduct, Herley Landrum suffered injuries as described herein. Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Defendant All-American Care Centers, Inc., including, but not limited to, medical expenses, pain and suffering, mental anguish, emotional distress and loss of life in an amount exceeding that required for federal court jurisdiction in diversity of citizenship cases, to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

### **COUNT THREE: BREACH OF THE PROVIDER AGREEMENT**

40. Plaintiff incorporates the allegations contained in paragraphs 1-39 as if fully set forth herein.

41. Upon becoming a resident of All-American Care of Little Rock, Herley Landrum, as a Medicare and/or Medicaid recipient, became a third-party beneficiary of the contract or provider agreement between the Defendant All-American Care Centers, Inc. and the state and federal governments.

42. For consideration duly paid by Mr. Landrum, or on his behalf, Defendant agreed to provide residents with personal and custodial care and professional nursing care in compliance with the requirements set forth in the provider agreements, as well as the minimum standards of care imposed by applicable law including the statutes and regulations set out herein. In addition, by entering into the agreement, Defendant All-American Care Centers, Inc. promised to “comply with all rules, regulations, changes in and additions thereto issued by the United States Department of Health and Human Services pertaining to nursing homes, and to comply with all rules, regulations, duly promulgated changes in and additions thereto by the State.” Defendant further promised to “comply with all Federal and State laws, rules and regulations”; agreed that the rights and privileges of the residents were the “primary concern” to the parties; and covenanted to “protect and preserve” the rights of the residents. The parties to the contract agreed “that failure to act in a manner consistent with those rights and privileges shall constitute an immediate breach of agreement.”

43. As the name implies, the provider agreement exists to pay for and provide for resident personal or custodial care and professional nursing care. The provider agreements between the Defendant All-American Care Centers, Inc. and the state and federal government were clearly intended to benefit the residents of All-American Care of Little Rock, including Herley Landrum.

44. Defendant All-American Care Centers, Inc. breached the provider agreement and committed multiple acts of nonfeasance in failing to provide the care, goods and services to industry standards, as required by law and as agreed, including but not limited to:

- a) Nonfeasance in failing to provide, as promised, the care and services for Mr. Landrum to attain or maintain his highest practicable physical, mental, and psychosocial well-being, in accordance with a comprehensive assessment and plan of care;
- b) Nonfeasance in failing to provide, as promised, dietary services, including special diets, supplemental feedings, special delivery preparation, assistance and equipment required for preparing and dispensing oral feedings and special feeding devices;
- c) Nonfeasance in failing to provide, as promised, personal or custodial services and nursing care;
- d) Nonfeasance in failing, as promised, to implement policies and procedures and prevent infringement or deprivation of Mr. Landrum's resident's rights;
- e) Nonfeasance in failing to provide, as promised, assistance to Mr. Landrum in developing and carrying out a plan of care;



f) Nonfeasance in failing to comply, as promised, with protections, duties and obligations imposed by applicable state and federal statutes and regulations as alleged herein; and

g) Nonfeasance in failing to staff All-American Care of Little Rock with sufficient personnel to adequately meet the needs of Mr. Landrum, failing to comply with the rules and regulations promulgated by the state and federal governments, and in failing to provide staff qualified to meet the needs of the residents.

45. As a result of the Defendant's breach of the provider agreement, Plaintiff asserts a claim for judgment for all compensatory damages including the amount a jury determines is sufficient compensation for the loss of the benefit of promised services, care and treatment, in an amount that exceeds that required for federal court jurisdiction in diversity of citizenship cases.

46. Defendant is also liable for all consequential damages, because it knew, or should have known that breaches of the provider agreements would result in consequential damages to Herley Landrum, and, under the circumstances, Defendant should have understood that it had agreed to assume responsibility for any consequential damages caused by its breaches of the provider agreement.

47. Plaintiff seeks judgment for all foreseeable consequential damages, which flowed naturally from the failure of Defendant to provide the care, goods and services promised under the provider agreements, including but not limited to medical expenses, pain and suffering and mental anguish.

48. Plaintiff is entitled to seek punitive damages for breach of contract, because Defendant knew or ought to have known, in the light of the surrounding circumstances, that its nonfeasance in breach of the provider agreements would naturally and probably result in injury or damage, yet Defendant breached the agreement in reckless disregard of the consequences from which malice may be inferred.

49. Plaintiff is entitled to attorneys' fees pursuant to [Ark. Code Ann. § 16-22-308](#).

#### **COUNT FOUR: THE RESIDENTS' RIGHTS ACT**

50. Plaintiff incorporates all of the allegations contained in Paragraphs 1-49 as if fully set forth herein.

51. As the licensee of All-American Care of Little Rock, Defendant All-American Care Centers, Inc. had statutorily-mandated duties to provide Herley Landrum with 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.](#)

52. 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 Mr. Landrum.

53. The Protection of Long-Term Care Facility Residents Act mandates every licensed facility shall comply with all applicable standards and rules of the Office of Long-Term Care of the Arkansas Department of Human Services.

54. The statutory duty imposed upon the facility licensee to prevent deprivation or infringement of the resident's rights of Mr. Landrum is non-delegable. Thus, the Defendant is directly liable to Plaintiff for any deprivation and infringement of Mr. Landrum'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 or agencies, as well as any deprivation and infringement of Mr. Landrum's resident's rights caused by Defendant's policies and procedures, whether written or unwritten, and common practices.

55. Any person or entity acting as an employee or agent of the licensee assumed and undertook to perform the licensee's non-delegable and statutorily-mandated duty to provide Mr. Landrum his nursing home resident's rights as set forth in [Ark. Code Ann. §§ 20-10-1201 et seq.](#) in the operation and management of All-American Care of Little Rock.

56. Notwithstanding the responsibility of the licensee to protect and provide for these statutorily-mandated, nursing home resident's rights, Defendant infringed upon, and Herley Landrum 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 Mr. Landrum, 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 Mr. Landrum 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 Mr. Landrum or his designee or legal representative, which included a comprehensive assessment of his needs, 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 Mr. Landrum, 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 physical and chemical restraints;

h) 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;

i) The right to the obligation of the facility to keep full records of the admissions and discharges of Mr. Landrum, 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;

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; and

j) The right to be treated courteously, fairly, and with the fullest measure of dignity.

57. The aforementioned infringement and deprivation of the rights of Mr. Landrum were the result of Defendant failing to do that which a reasonably careful person would do under similar circumstances.

58. As set forth herein, Defendant negligently failed to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, and medical services to Mr. Landrum.

59. As a result of the aforementioned violations, the Plaintiff, pursuant to [Ark. Code Ann. § 20-10-1209\(a\)\(4\)](#), is entitled to recover actual damages against the licensee of the facility. The Plaintiff asserts a claim for judgment for actual damages against Defendant, including, but not limited to, medical expenses, pain and suffering, mental anguish, and emotional distress, in an amount to be determined by the jury and exceeding that required for federal court jurisdiction in diversity of citizenship cases, plus costs and all other relief to which Plaintiff is entitled by law.

60. The infringement or deprivation of the resident's rights of Herley Landrum 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.

#### **COUNT FIVE: DECEPTIVE TRADE PRACTICES**

61. Plaintiff incorporates the allegations contained in Paragraphs 1-60 as if fully set forth herein.

62. At all times pertinent to this cause of action, Herley Landrum was a “disabled person” as defined by the Arkansas Deceptive Trade Practices Act, [Ark. Code Ann. § 4-88-201\(b\)](#). As a “disabled person” within the meaning of the Deceptive Trade Practices Act, the Plaintiff has a private cause of action to recover actual damages, punitive damages, and reasonable attorney's fees pursuant to [Ark. Code Ann. § 4-88-204](#).

63. At all relevant times, the Arkansas Deceptive Trade Practices Act, codified at [Ark. Code Ann. § 4-88-107\(a\)](#) provides that it is unlawful to:

a. Knowingly taking advantage of a consumer who is reasonably unable to protect her or her interest because of:

i. Physical infirmity; or

ii. A similar factor.

b. Engaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade.

64. [Ark. Code Ann. § 4-88-108](#) provides that, when utilized in connection with the sale or advertisement of any goods, services, or charitable solicitation, it shall be unlawful for any person to act, use or employ any deception, fraud or false pretense.

65. The conduct of Defendants, as described herein, constitutes a deceptive practice in violation of the Deceptive Trade Practices Act. Defendants violated the Protection of Long Term Care Facilities Residents' Act and federal law which is a per se violation of the Deceptive Trade Practices Act. Defendants also failed to inform Plaintiff in Defendants' standard admission agreement that the Facility routinely does not meet minimum staffing requirements imposed by state and federal law.

66. The Defendants engaged in an unconscionable, false, and/or deceptive act or practice in business, commerce and/or trade by marketing themselves and holding themselves out to the public and Herley Landrum as being able to meet the needs of **elder** and disabled residents of All-American Care of Little Rock. Defendants profited greatly as a result of their deceptive trade practices, but the Defendants were aware that the facility could not meet the needs of its residents, including Herley Landrum.

67. Defendants Jerry L. Rhoads; Sharon K. Rhoads, Kip A. Rhoads, and Willie Cathie Jones controlled the operations and administration of All-American Care of Little Rock. The Rhoads Defendants' and Ms. Jones' control over the facility included, but is not limited to, establishing policies and procedures governing operation of the facility, setting the facility's operating budget, control of staffing, hiring, and firing, of the facility's medical director, hiring, and firing, of the facility's administrator, and billing the state and federal governments. Defendants Jerry L. Rhoads, Sharon K. Rhoads, Kip A. Rhoads, and Cathie Jones are therefore "control persons" as defined by the Arkansas Deceptive Trade Practices Act and thus jointly and severally liable for the Plaintiff's damages pursuant to [Ark. Code Ann. § 4-88-113\(d\)](#).

68. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered actual damages.

#### **CAUSES OF ACTION AGAINST CATHIE JONES**

69. Plaintiff re-alleges and incorporates the allegations in paragraphs 1 - 68 as if fully set forth herein.

70. Upon information and belief, Cathie Jones was the administrator at All-American Care of Little Rock during the residency of Herley Landrum.

71. As administrator, Cathie Jones was responsible for ensuring that the facility complied with all state and federal regulations related to nursing facilities. Administrator Defendant had a duty to administrate the facilities 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 all applicable federal, state and local laws, regulations and codes and with accepted professional standards and principles that apply to professionals providing services in such facilities. In addition, as a member of the facility's governing body, the Administrator Defendant had a duty to promulgate and implement policies and procedures for the operation and management of All-American Care of Little Rock. The Administrator Defendant breached the duty of care she owed to Herley Landrum.

#### **NEGLIGENCE**

72. Plaintiff re-alleges and incorporates the allegations in Paragraphs 1 - 71 as if fully set forth herein.

73. Cathie Jones owed a duty to the residents of All-American Care of Little Rock, including Herley Landrum, to provide services as a reasonable administrator within accepted standards for a nursing home administrator.

74. Administrator Defendant breached the duties owed to the residents of All-American Care of Little Rock, including Herley Landrum, by failing to properly administer the facility and 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 Herley Landrum the care he required. The negligence of Administrator Defendant includes, but is not limited to, the following acts and omissions:

- a) Failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure that Mr. Landrum received appropriate nursing care;
- b) Failure to ensure that Mr. Landrum was provided with basic and necessary care and supervision;
- c) 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 Mr. Landrum received care, treatment, and services in accordance with State and Federal law;
- d) Failure to assign nursing personnel at the facility duties consistent with their education and experience based on:
  - 1) Mr. Landrum's medical history and condition, nursing, and rehabilitative needs;
  - 2) The characteristics of the resident population residing in the area of the facility where Mr. Landrum was a resident; and
  - 3) Nursing skills needed to provide care to such resident population;
- e) The failure to provide sufficient numbers of qualified personnel, to ensure that Mr. Landrum was provided with a safe environment and was protected from **abuse** and mistreatment by the correct use of reasonable safety measures;
- f) The failure to properly in-service and orient employees to pertinent resident care needs to maintain the safety of residents;
- g) The failure to protect Mr. Landrum from **abuse** and neglect; and
- h) The failure to provide adequate supervision to the nursing staff so as to ensure that Mr. Landrum received adequate and proper care.

75. 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 Herley Landrum.

76. 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, medical expenses, extreme pain and suffering, mental anguish, disfigurement, disability, degradation, loss of personal dignity, and emotional distress, in an amount exceeding that required by federal court jurisdiction in diversity of citizenship cases to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Leveda S. McGee, as Administratrix of the Estate of Herley Landrum, deceased, and on behalf of the wrongful death beneficiaries of Herley Landrum, prays for judgment against Defendant as follows:

- 1. For damages in an amount adequate to compensate Plaintiff for the injuries and damages sustained.
- 2. For all general and special damages caused by the alleged conduct of Defendant.
- 3. For the costs of litigating this case.
- 4. For attorneys' fees as provided by [Ark. Code Ann. § 16-22-308](#) and [Ark. Code Ann. § 16-118-107](#).

5. For punitive damages sufficient to punish Defendants for their egregious and malicious misconduct in reckless disregard and conscious indifference to the consequences to Herley Landrum and to deter Defendants and others from repeating such atrocities.

6. For all other relief to which Plaintiff is entitled.

Respectfully submitted,

Leveda S. McGee, as Administratrix of the Estate of Herley Landrum, deceased, and on behalf of the wrongful death beneficiaries of Herley Landrum

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