

2006 WL 6145618 (Ariz.Super.) (Trial Pleading)
Superior Court of Arizona.
Maricopa County

In the Matter of the Estate of Noyes W. HANSCOME, Deceased.
Colleen A. Hanscome, Personal Representative of the Estate of Noyes W. Hanscome, on behalf
of the Estate of Noyes W. Hanscome, and Colleen A. Hanscome, individually and on behalf of
Noyes W. Hanscome's statutory beneficiaries pursuant to A.R.S.section 12-612 (A), Plaintiffs,
v.

Evergreen at Foothills, L.L.C. a Washington Limited Liability Company, dba Evergreen Foothills
Health and Rehabilitation Center; Evergreen Healthcare Management, L.L.C., a Washington Limited
Liability Company; Kim Benjamin Bangerter, Executive Director; and John Does 1-200; Defendants.

No. CV 2006-005515.
April 14, 2006.

**Complaint Civil: 1) Negligence 2) Negligence Per Se 3) Vulnerable Adult Abuse/Neglect/
Exploitation Pursuant to the Adult Protective Services Act (A.R.S. § 46-455) 4) Wrongful Death**

Wilkes & McHugh, P.A., [Melanie L. Bossie](#), #022825, [James M. Morgan](#), #022245, [Megan E. Gailey](#), #023648, [Terry Schneier](#),
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Attorneys for Plaintiffs.

On behalf of the Estate of Noyes Hanscome, Plaintiff Colleen Hanscome alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to: a) the [Arizona Constitution, Article 6, Section 14](#); b) [Arizona Revised Statutes \("A.R.S."\) § 46-455\(B\)](#); and c) the Arizona Rules of Civil Procedure, Rule 4.2(a).
2. Because Defendants have caused events to occur in Maricopa County, by which the causes of action alleged in this complaint have arisen, proper venue lies with this Court.

THE PARTIES PLAINTIFF

3. At all relevant times, Noyes Hanscome was a resident of Maricopa County, Arizona, was over the age of 18, and suffered from physical impairments, which made him unable to protect himself from the abuse, neglect and exploitation of others. As such, Noyes Hanscome was a "vulnerable adult" as defined by [A.R.S. § 46-451\(A\) \(10\)](#).
4. Noyes Hanscome's injuries were caused by events that occurred in Maricopa County, Arizona.
5. Colleen Hanscome is the surviving spouse of Noyes Hanscome and is the Personal Representative of his estate for purposes of this litigation.
6. As Personal Representative, Colleen Hanscome brings this action on behalf of, Noyes Hanscome, for injuries, pain and suffering, and other economic and non-economic damages sustained by Noyes Hanscome prior to his death. Colleen Hanscome

also brings this action on behalf of herself and the statutory beneficiaries of Noyes Hanscome as set forth in [A.R.S. Section 12-612 \(A\)](#).

DEFENDANTS

7. At all relevant times, Defendants EVERGREEN at FOOTHILLS, L.L.C., an Washington limited liability company, and JOHN DOES 1 through 50 were licensed and doing business as (dba) EVERGREEN FOOTHILLS HEALTH AND REHABILITATION CENTER in Phoenix, Arizona, Maricopa County (hereinafter, sometimes referred to as the “FACILITY”).

8. At all relevant times, Defendants EVERGREEN HEALTHCARE MANAGEMENT, L.L.C., a Washington limited liability company; and JOHN DOES 52 through 100 (hereinafter sometimes collectively referred to as “MANAGEMENT DEFENDANTS”) owned, operated, and/or managed the FACILITY, and furthermore participated in, authorized, and/or directed the conduct of the FACILITY and its respective agents and employees.

9. At all relevant times, the FACILITY was in the business of providing long-term care as a 24-hour nursing facility and as such was subject to the requirements of all corresponding statutes and regulations that govern the operation of a 24-hour nursing facility.

10. At all relevant times, the FACILITY was certified as a nursing facility for purposes of the Arizona Health Care Cost Containment System (AHCCCS) and the Arizona Long-Term Care System (ALTCS).

11. Defendants KIM BENJAMIN BANGERTER and JOHN DOES 101 through are licensed as Nursing Care Institution Administrators by the Arizona Board of Examiners of Nursing Care Institution Administrators and Adult Care Home Managers. During all relevant times, they were employed as the Administrators of the FACILITY.

12. Defendant KIM BENJAMIN BANGERTER is and was a resident of Arizona.

13. JOHN DOES 111 through 200 are those persons and/or entities whose conduct caused the injuries alleged herein to Noyes Hanscome.

14. JOHN DOES 1 through 200 are persons and/or entities whose relationships to the named Defendants, or whose acts or omissions, give rise to legal responsibility for the damages incurred by Noyes Hanscome and his family, but whose true identities, at the present time, are unknown to Plaintiff. These persons are hereby notified of Plaintiff's intention to join them as defendants, if and when, additional investigation or discovery reveals the appropriateness of such joinder. (Hereinafter, all cumulative references to “Defendants” are in reference to the FACILITY, the MANAGEMENT DEFENDANTS, Defendant KIM BENJAMIN BANGERTER and all JOHN DOES 1 through 200).

DIRECT AND VICARIOUS LIABILITY

15. At all relevant times, the FACILITY and the MANAGEMENT DEFENDANTS owned, operated, and/or managed the FACILITY, and furthermore participated in, authorized, and/or directed the conduct of the FACILITY and its respective agents and employees. As such, the FACILITY and the MANAGEMENT DEFENDANTS are directly liable for their own negligence, recklessness and other tortious conduct, in the hiring and management of their agents and employees, as is more fully alleged herein.

16. At all relevant times, the FACILITY and the MANAGEMENT DEFENDANTS provided management services to the FACILITY, which governed and controlled the nursing care and custodial services provided to Noyes Hanscome, and that by virtue of their management and control over the FACILITY, the FACILITY and the MANAGEMENT DEFENDANTS

voluntarily and intentionally assumed responsibility for and provided supervisory services for the nursing care and custodial services provided to Noyes Hanscome while he was a resident at the FACILITY.

17. That the FACILITY and the MANAGEMENT DEFENDANTS through their managers, directors, presidents, vice-presidents, executive officers, and other agents, directly oversaw, managed, and/or controlled all aspects of the operation and management of the FACILITY, including, but not limited to, the budget of the FACILITY, the staffing of the FACILITY, staff training, the FACILITY'S policy and procedures manual(s), the licensing of the FACILITY, accounts payable, accounts receivable, FACILITY development and leasing, general accounting, cash management, pricing, reimbursement, capitalization, and profit and loss margins.

18. That the FACILITY and the MANAGEMENT DEFENDANTS, through their managers, directors, presidents, vice-presidents, executive officers, and other agents created budgets, policies and procedures that the FACILITY employees were required to implement and follow.

19. That the FACILITY and the MANAGEMENT DEFENDANTS employed all of those persons who attended to and provided care to Noyes Hanscome while he was a resident at the FACILITY, and employed those persons in management and supervisory positions who directed the operations of the FACILITY, all of whom were acting within the course and scope of their employment, during Noyes Hanscome's residency.

20. That the FACILITY and the MANAGEMENT DEFENDANTS, through their administrators, directors and managing agents, complied with and ratified all conduct of the FACILITY alleged herein.

21. That at all relevant times, the Defendants were the knowing agents and/or alter-egos of one another, inclusive, and that Defendants' officers, directors, and managing agents, directed, approved, and/or ratified the conduct of each of the other Defendants' officers, agents and employees, and are therefore vicariously liable for the acts and/or omissions of their co-defendants, their agents and employees, as is more fully herein alleged. Moreover, at all relevant times, all Defendants were acting within the course and scope of their employment.

22. The Defendants' tortious acts and omissions, as alleged herein, were done in concert with each other and pursuant to a common design and agreement to accomplish a particular result, namely maximizing profits by operating the FACILITY in such a manner that the FACILITY was underfunded and understaffed. Moreover, the Defendants aided and abetted each other in accomplishing the acts and omissions alleged herein. (*See Restatement (Second) of Torts § 876 (1979)*).

23. Defendants, by their acts and omissions as alleged herein, operated pursuant to an agreement, with a common purpose and community of interest, with an equal right of control, and subject to participation in profits and losses, as further alleged herein, such that they operated a joint enterprise or joint venture, subjecting each of them to liability for the acts and omissions of each other.

FACTUAL SUMMARY/PLAINTIFF'S INJURIES

24. On approximately January 28, 2005, Noyes Hanscome was admitted as a resident to the FACILITY and placed under the care of the Defendants and their employees. He remained a resident at the FACILITY until approximately February 28, 2005, just days before his death.

25. During his residency, Defendants knew that Noyes Hanscome was in a compromised physical state. He was previously hospitalized immediately prior to his admission into the FACILITY for deep vein thrombosis in both legs. Because of his compromised physical state, Defendants knew that he needed complete assistance, was susceptible to infections and was at risk for the development and worsening of pressure sores, because of his limited mobility.

26. As a result of Noyes Hanscome's condition, he required supervision, close monitoring, and medical attention to ensure his health, safety and well-being.

27. Defendants knew that by virtue of his physical state, Noyes Hanscome was dependent upon them for nursing services pursuant to Arizona Administrative Code ("A.A.C.") R9-10-906.

28. Defendants also knew that by virtue of Noyes Hanscome's physical state that he was dependent upon them for his activities of daily living including, but not limited to, feeding and dietary planning, skin care, hygiene, infection control/prevention, toileting, and physical rehabilitation/exercise.

29. Despite Defendants' knowledge and awareness of Noyes Hanscome's needs, during his residency at the FACILITY, Noyes Hanscome did not receive the attention and care necessary to prevent the development and worsening of pressure sores, including but not limited to a horrific stage IV pressure sore to his sacral and coccyx area, and to prevent him from developing infections.

30. As a result of Defendants' inattention and lack of necessary care, Noyes Hanscome's pressure sores became infected.

31. Noyes Hanscome needed assistance with eating and dietary planning, which was known to Defendants. Defendants' failure to provide this assistance put Noyes Hanscome at risk for malnutrition, weight loss and dehydration, which was known to the Defendants and which he in fact suffered.

32. Noyes Hanscome's injuries were entirely preventable had Defendants simply provided the FACILITY with sufficient staff, in number and training, to provide his with that amount of care that laws and regulations required.

33. Noyes Hanscome's pressure sores, infections, malnourishment, dehydration and his ultimate death, would not have occurred but for the complete willful disregard by Defendants of their duties owed to Noyes Hanscome.

34. Noyes Hanscome was subjected to pain and suffering, and he eventually died as a result of the inadequate care and treatment at the hands of the Defendants

DEFENDANTS' KNOWLEDGE, DUTIES, AND WRONGFUL CONDUCT

35. During the time Noyes Hanscome was a resident at the FACILITY, the Defendants knew and/or had reason to know that he was an incapacitated and vulnerable adult, as those terms are defined in [A.R.S. section 46-451](#).

36. At all relevant times, Defendants held themselves out as being competent and qualified to provide and administer skilled nursing and health care services, including rehabilitation, to their residents, including Noyes Hanscome, and further, Defendants held themselves out as willing to comply with the appropriate standard of care for health care providers in their respective fields and acted together as an enterprise, as defined by [A.R.S. section 46-455](#), to provide care.

37. Among the duties the Defendants owed to Noyes Hanscome was the duty to report incidents of abuse or neglect, as required by [A.R.S. section 46-454](#), whenever Defendants had a reasonable basis to suspect that such abuse or neglect had occurred.

38. As the governing authority for the FACILITY, the FACILITY and the MANAGEMENT DEFENDANTS were responsible for the organization and administration of the FACILITY, and had duties that included, but were not limited to: (a) ensuring that the FACILITY complied with applicable statutes and regulations; (b) adopting policies and procedures for the FACILITY; and (c) appointing an administrator to manage the FACILITY.

39. At all times mentioned herein, the Defendants had a duty to employ sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of Noyes Hanscome, as determined by appropriately prepared resident assessments and individual plans of care.

40. At all times mentioned herein, the Defendants had a duty to provide for the safety of residents, including Noyes Hanscome, particularly residents who were impaired and in need of special precautions for their safety, by providing each resident, including Noyes Hanscome, with adequate supervision, assistance, nutrition, and nursing and medical intervention to prevent injury or deterioration of their health, as well as to provide curative and restorative care as needed and as prescribed by physicians.

41. As the Administrators for the FACILITY, Defendants KIM BENJAMIN BANGERTER, and JOHN DOES 101 through 110's duties included, but were not limited to: (a) appointing and supervising a medical director to be responsible for resident medical care at the FACILITY; (b) appointing and supervising a Director of Nursing for the FACILITY; (c) appointing and supervising a food service supervisor for the FACILITY; (d) supervising and evaluating staff performance at the FACILITY; (e) developing and implementing written policies and procedures for nursing services, personnel, staff orientation and in-service training, admission and discharge of residents, safety and emergency plans, and quality management plans for the FACILITY; and (f) investigating and reporting all incidents involving resident neglect or abuse to the Office of Long Term Care Licensure and Adult Protective Services, if required by [A.R.S. section 46-454](#), and preventing further neglect or abuse during the course of any investigation.

42. The Defendants were responsible for providing nursing care to Noyes Hanscome while he was a resident at the FACILITY, and owed Noyes Hanscome a variety of duties under relevant statutes, regulations, and the common law, including, but not limited to, those duties enumerated in [A.R.S. sections 46-451 through 46-457](#) and A.A.C. R9-10-901 through R9-10-919.

43. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform was the duty to provide reasonable and appropriate health care services in accordance with recognized standards of care.

44. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform were the duties to provide reasonable care to prevent him from developing infections, to prevent the development and worsening of pressure sores, and to prevent him from becoming malnourished and dehydrated.

45. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform were the duties to adequately screen, evaluate, check references of, test competence of, and use reasonable care in selecting management, nurses, nursing assistants and other personnel to work at the FACILITY.

46. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform was the duty to employ and train sufficient nurses, nursing assistants and other personnel to provide adequate care for Noyes Hanscome.

47. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform were the duties to provide adequate staff to monitor Noyes Hanscome's condition and to adequately train, motivate, and supervise that staff in performing assessments of his condition and planning for his care and safety needs.

48. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform was the duty to create and maintain accurate records of Noyes Hanscome's care plan, condition, progress and treatment.

49. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform was the duty to appropriately chart information concerning Noyes Hanscome's condition, assessments, care planning, history, and monitoring so as to enhance his progress and well-being.

50. Among the duties the Defendants and their employees owed to Noyes Hanscome, but failed to perform was the duty to follow orders and recommendations of physicians in providing care and safety management to Noyes Hanscome.

51. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform was the duty to notify physicians and emergency services as reasonably necessary to seek a physician's consultation and treatment, and to provide the physicians with adequate information to enable them to make informed decisions concerning Noyes Hanscome's condition and course of treatment so that appropriate orders could be made for his care and safety.

52. Among the duties the Defendants and their employees owed to Noyes Hanscome but failed to perform was the duty to monitor and properly assess his condition, from initial assessment, ongoing assessment, through the development of a timely care plan and any revisions thereto, and to monitor his general health and safety, nutritional needs, and to report to physicians any failure to improve under the therapies ordered.

53. That Noyes Hanscome's injuries, as alleged herein, would not have occurred but for the utter and complete willful disregard by the Defendants of their duties to Noyes Hanscome.

54. The Defendants, acting through their agents and employees, failed to properly assess and diagnose the condition of Noyes Hanscome, or develop an appropriate care plan to enhance his health and to address those conditions from which he suffered.

55. The Defendants, acting through their agents and employees, failed to adequately follow physician's orders concerning Noyes Hanscome's treatment and failed to properly monitor and assess his condition and communicate the same to his physician so that appropriate orders could be taken and later implemented into his plan of care.

56. Defendants allowed Noyes Hanscome to suffer in a hazardous environment, and as such, he was forced to suffer poor quality of life.

57. That the Defendants owed a duty to Noyes Hanscome, yet failed to provide services and care needs for him in such a manner and in such an environment as to promote maintenance or enhancement of his quality of life. (A.A.C. R9-10-906(A)(1), -906(B)(1); A.A.C. R9-10-910(B)(1), -910(B)(2)).

58. That the Defendants owed a duty to Noyes Hanscome, yet failed to provide services and activities and failed to operate, own, manage, control and/or administer the FACILITY in a manner that enabled him to attain or maintain the highest practicable physical, mental, and psychosocial well-being possible, in accordance with a written plan of care. (A.A.C. R9-10-906(B)(7), -906(B)(8), - 906(B)(10) and -906(B)(11)).

59. That the Defendants owed a duty to Noyes Hanscome, yet failed to provide services by sufficient numbers of personnel on a 24-hour basis to provide care to him, in accordance with resident care plans. (A.A.C. R9-10-905(A)(1); A.A.C. R9-10-906(A)(1); A.A.C. R9-10-908(3); A.A.C. R9-10-910(B)(2)).

60. That the Defendants owed a duty to Noyes Hanscome, yet failed to operate and provide services in compliance with all applicable laws, regulations, and codes, and with accepted standards and principles that apply to those providing services in such a skilled nursing facility. (A.A.C. R9-10-904 (A)(1), - 904(A)(3)).

61. That the Defendants owed a duty to Noyes Hanscome, yet failed to ensure that the nurse's aides or any other staff members providing direct care, were able to demonstrate competency in skills and techniques necessary to care for residents' care needs, including Noyes Hanscome's needs, as identified through residents', including Noyes Hanscome's, assessments and described in their respective plans of care. (A.A.C. R9-10-905(A)(2)).

62. That the Defendants, through FACILITY administrators, owed a duty to their residents, including Noyes Hanscome, yet failed to ensure that the FACILITY'S policies and procedures were established, documented, and implemented that covered abuse of residents; job descriptions, qualifications, duties, orientation, and in-service education for each staff member; resident rights; quality management and incident documentation; nursing services; dispensation, administration, wound management, fall prevention and disposal of medication and biologicals; infection control; and medical records including oral, telephone and electronic records. (A.A.C. R9-10-904(D), -904(E)).

63. The Defendants breached all of those duties set forth above with respect to Noyes Hanscome, which breaches amounted to the abuse and neglect of Noyes Hanscome, resulting, in part, from a lack of adequate supervision, planning and training by the Defendants in carrying out their responsibilities to Noyes Hanscome.

64. The aforementioned breaches, abuse and neglect resulted, in part, from a lack of adequate training of and care by nurses, nurse aides, food service supervisors, dieticians, and others attending to the care of Noyes Hanscome at the FACILITY.

65. The aforementioned breaches, abuse and neglect, all with the consequential physical and mental suffering, caused Noyes Hanscome to suffer from the development and worsening of pressure sores; to suffer from infections; to become malnourished and dehydrated and contributed to his ultimate death.

66. Defendants knew that upon his admission to the facility, Noyes Hanscome was in a compromised physical state, as described herein. Further, he was dependent on Defendants for nursing services pursuant to A.A.C. R9-10-906.

67. That despite the Defendants' knowledge of the serious physical, mental and custodial needs of Noyes Hanscome, Defendants intentionally admitted high acuity residents, such as Noyes Hanscome, who required the most intensive care, into their FACILITY for the sole reason that high acuity residents command a higher rate of income and reimbursement to the FACILITY. At the same time, the Defendants intentionally maintained a minimal staff, in both number and training, so as to minimize staffing costs at the FACILITY while maximizing profits, all the while knowing that this intentional understaffing and insufficient training placed the residents, including Noyes Hanscome, at great risk of injury and prevented them from receiving the legally mandated level of care required by law.

68. That as part of a plan to maximize profits (hereinafter, sometimes referred to as the PROFIT SCHEME) Defendants intentionally cut costs by failing to adequately train existing or incoming staff to meet the needs of Noyes Hanscome, and by retaining incompetent service personnel, many of whom were not properly trained or qualified to care for him. Pursuant to this PROFIT SCHEME, the Defendants imposed financial limitations on the FACILITY in matters such as the setting of financial budgets that were approved, mandated, directed and ratified by all Defendants.

69. That Defendants ratified the conduct of each of their co-Defendants in that they mandated, were aware of, and/or accepted the chronic understaffing and the inadequate training of FACILITY staff, and were aware of the FACILITY'S customary practice of receiving complaints and notices of deficiencies relating to the care of FACILITY residents, and were aware that such understaffing, inadequate training, and deficiencies led to injury and death to residents.

70. That the corporate authorization and enactment alleged herein constituted the mandate, permission, consent, and ratification of the FACILITY'S misconduct by Defendants who had within their power, ability and discretion to mandate that the FACILITY employ adequate staff, in terms of number and training, to meet the needs of Noyes Hanscome.

COUNT ONE

Negligence By All Defendants

71. All allegations set forth above in paragraphs I through 70 are incorporated by reference as if fully set forth herein.

72. That Defendants owed Noyes Hanscome statutory and regulatory standard of care duties to Noyes Hanscome, as set forth above.

73. That Defendants breached those duties.

74. That Defendants' breach of their duties to Noyes Hanscome, were the direct, actual, legal and proximate cause of Noyes Hanscome's injuries and death.

75. That but for the Defendants' conduct and breaches of duty, Noyes Hanscome would not have suffered the injuries described herein.

76. That the injuries suffered by Noyes Hanscome were foreseeable as Defendants knew or should have known that their conduct, including their profit scheme, which included underfunding and understaffing the FACILITY, would inevitably lead to the type and kind of injuries, damages and ultimately death suffered by Noyes Hanscome.

77. That Noyes Hanscome sustained injuries, damages and death as a result of Defendants' breaches.

COUNT TWO

Negligence Per Se By All Defendants

78. All allegations set forth above in paragraphs 1 through 77 are incorporated by reference as if fully set forth herein.

79. That during Noyes Hanscome's residence at the FACILITY there were statutory and regulatory duties imposed upon the Defendants, some of which have been specifically referred to in this complaint, by way of example.

80. That one of the purposes of the statutes and regulations is to protect against the type of injuries that Noyes Hanscome sustained.

81. That Noyes Hanscome is a member of a group of persons the statutes and regulations are intended to protect.

82. That Defendants' conduct was in violation of those statutes and regulations, as set forth herein, and was the direct, actual, legal, and proximate cause of Noyes Hanscome's injuries and death. Such conduct is therefore negligent per se.

COUNT THREE

Violation of the Adult Protective Services Act ([A.R.S. sections 46-454 and 46-455](#)) By All Defendants

83. All allegations set forth above in paragraphs 1 through 82 are incorporated by reference as if fully set forth herein.

84. That at all relevant times, Noyes Hanscome was unable to make decisions sufficient to prevent his abuse and neglect.

85. That at all relevant times, Noyes Hanscome was unable to protect himself from the abuse and neglect he suffered at the hands of the Defendants before his death.

86. That Noyes Hanscome was an incapacitated and vulnerable adult, as described herein, whose life was endangered by the Defendants' conduct, for profit nonetheless, constituting "neglect, abuse, and exploitation" as defined in [A.R.S. section 46-451\(A\)](#).

87. That Noyes Hanscome employed the Defendants to provide him with 24-hour care, and the Defendants, therefore, assumed a legal duty to provide him with proper care.

88. That the Defendants and their employees willfully, intentionally, and/or negligently caused or permitted Noyes Hanscome to be injured and/or to be placed in a situation such that his person or health was in danger, as more fully described above.

89. That Noyes Hanscome was deprived of proper nursing and medical services which led to the following injuries and harm: a) the development and worsening of pressure sores; b) infections; and c) malnourishment and dehydration. Such sub-standard care ultimately resulted in Noyes Hanscome's death just days after leaving the FACILITY.

90. Defendants, by engaging in the conduct alleged herein, made a conscious decision to promote profits instead of providing the legally mandated care, which Noyes Hanscome deserved, and as a result, the Defendants' actions were oppressive, fraudulent, reckless and/or malicious, *i.e.*, Defendants consciously disregarded the unjustifiable and substantial risk of significant harm to Noyes Hanscome's health, safety and welfare.

91. The acts and/or omissions of the Defendants constitute a breach of the aforementioned duties and are a deviation from the applicable standard of care in reckless disregard of the needs of Noyes Hanscome, constituting abuse and neglect of a vulnerable adult as defined by statute, giving rise to a cause of action under [A.R.S. section 45-455](#), and justifying an award of compensatory and exemplary damages, and attorneys' fees, and related expenses.

92. Based on the foregoing, the Defendants and their employees had a reasonable basis to suspect that Noyes Hanscome was a victim of abuse and/or neglect. However, Defendants and their employees failed to report that Noyes Hanscome was a victim of abuse and/or neglect, as required by [A.R.S. section 46-454](#).

93. By failing to report that Noyes Hanscome was a victim of abuse and/or neglect, the Defendants and their employees permitted such abuse and neglect to continue, resulting in the endangerment of Noyes Hanscome's health and culminating in his suffering the injuries alleged herein, including death.

94. As a direct, actual, legal, and proximate cause of the Defendants' conduct, Noyes Hanscome suffered unjustifiable and substantial physical and mental suffering.

95. The aforementioned breaches, abuse, and neglect are representative of a pattern of abuse and neglect of incapacitated and vulnerable adults as evidenced by previous incidents, lack of appropriate staffing, and ongoing patterns of abuse and/or neglect of residents at the FACILITY, including Noyes Hanscome, thereby justifying investigation by this Court and Noyes Hanscome into the operations and patterns of abuse and neglect of residents and other wrongdoing, and justifying an award of damages, both compensatory and punitive, and such other penalties, injunctions, and orders as the Court deems appropriate.

COUNT FOUR

By Colleen Hanscome Individually and on Behalf of the Statutory Heirs for Wrongful Death by Defendants

96. All allegations set forth above in paragraphs 1 through 95 are incorporated by reference as if fully set forth herein.

97. Colleen Hanscome is the surviving spouse of Noyes Hanscome. Noyes Hanscome also had children who survived him.

98. That as a proximate result of the conduct as more particularly alleged above perpetrated by Defendants, Noyes Hanscome died on March 9, 2005.

99. Prior to the death of Noyes Hanscome, his wife and children enjoyed the love, society, comfort and attention of Noyes Hanscome.

100. As a proximate result of the negligent acts of the Defendants as alleged herein, which caused the death of Noyes Hanscome, his wife and children sustained pecuniary loss of the society, comfort, attention and love of Noyes Hanscome in a sum according to proof at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment and damages against all Defendants as follows:

1. For general damages according to proof;
2. For special damages according to proof;
3. For attorneys' fees;
4. For punitive and exemplary damages;
5. For costs of suit; and
6. For such other and further relief as the Court deems just and proper.

Dated: April 12, 2006

WILKES & McHUGH, P.A.

By: <<signature>>

Megan E. Gailey

James M. Morgan

Attorneys for Plaintiff

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