

2005 WL 6319452 (Miss.Cir.) (Trial Pleading)
Circuit Court of Mississippi.
Washington County

Susie GREEN, by and through Tressie Green, Next Friend, for the use and benefit of Susie Green, Plaintiff,

v.

GREENVILLE CONVALESCENT HOME, INC.; American Legacy Properties, LLC d/b/a Greenville Convalescent Home; Legacy Health Care Services, Inc.; Legacy Care, Inc.; Louisiana Nursing Homes, Inc.; Magnolia Healthcare Services, Inc.; KEPA, Inc.; Eva Ann Boschert; Verna B. Cook; Mollie Rogers Copeland as Executrix of the Estate of Doris Bariola; Bonnie Hatten; Nancy Pryor; H. Ken Beebe, Jr.; John Does 1 through 10; and Unidentified Entities 1 through 10 (as to Greenville Convalescent Home, n/k/a Legacy Manor Nursing & Rehabilitation Center), Defendants.

No. CI 2004-198.
January 26, 2005.

Amended Complaint

Susie Green, by and through Tressie Green, Next Friend, for the use and benefit of Susie Green, Wilkes & McHugh, P.A., [James B. McHugh](#), Mississippi Bar Number 100876, [Christine C. Althoff](#), Mississippi Bar Number 101077, 16 Office Park Drive, Ste. 8, Hattiesburg, MS 39402, Mailing Address: P.O. Box 17107, Hattiesburg, MS 39404, Telephone: 601-545-7363, Facsimile: 601-545-7364, Attorneys for Plaintiff.

Plaintiff, Susie Green, by and through Tressie Green Next Friend, for the use and benefit of Susie Green, and for her causes of action against Defendants, states:

JURISDICTIONAL STATEMENT

1. Susie Green was, at all times material hereto, a resident of Greenville Convalescent Home n/k/a Legacy Manor Nursing & Rehabilitation Center (Greenville Convalescent Home), a skilled nursing facility located at 1935 North Theobald Extended, Washington County, Greenville, Mississippi from January 24, 1992 until November 7, 2002, and suffered personal injuries and damages while a resident there.

2. Separate Defendant Greenville Convalescent Home, Inc., (Greenville Convalescent) is a Mississippi corporation with its principal place of business at 1935 N. Theobald Ext., Greenville, MS. The agent for service of Greenville Convalescent is CT Corporation System, 645 Lakeland East Dr. Ste. 1, Flowood, MS 39232. Greenville Convalescent was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Greenville Convalescent Home.

3. Separate Defendant American Legacy Properties, LLC (ALP) is a Mississippi limited liability corporation with its principal place of business is at 1935 N. Theobald Ext., Greenville, MS. The agent for service for ALP is CT Corporation System, 645 Lakeland East Dr. St. 1, Flowood, MS 39232. ALP was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Greenville Convalescent Home.

4. Separate Defendant Legacy Health Care Services, Inc. (LHCS) is a Mississippi corporation with its principal place of business at 571 Hwy 51, Ste. A, Ridgeland, MS 39157. The agent for service for LHCS is HK Beebe Jr., 229 Calumet Drive, Madison, MS

39110. LHCS was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Greenville Convalescent Home.

5. Separate Defendant Legacy Care, Inc. (LC) is a Mississippi company with its principal place of business at 229 Calcomet Drive., Madison, MS 39110. The agent for service for LC is Herman Kendrith Beebe, Jr. 229 Calcomet Drive, Madison, MS 39110. LC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Greenville Convalescent Home.

6. Separate Defendant Louisiana Nursing Homes, Inc. (LNH) is a foreign company with its principal place of business at 2002 Tidewater Lane, Madison, MS 39110. The agent for service for LNH is CT Corporation System, 118 North Congress Street, Jackson, MS 39205. LNH was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Greenville Convalescent Home.

7. Separate Defendant Magnolia Health Care Services, Inc. (Magnolia) is a Mississippi company with its principal place of business at P.O. Box 6015, Ridgeland, MS 39158. The agent for service for Magnolia is CT Corporation System, 118 North Congress Street, Jackson, MS 39205. Magnolia was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Greenville Convalescent Home.

8. Separate Defendant KEPA, Inc. (KEPA) is a foreign company with its principal place of business at 2002 Tidewater Lane, Madison, MS 39110. The agent for service for KEPA is CT Corporation System, 118 North Congress Street, Jackson, MS 39205. KEPA was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Greenville Convalescent Home.

9. Defendant, Eva Ann Boschert (Boschert), on information and belief, was the nursing home administrator for Greenville Convalescent Home, on or about certain dates relevant to this lawsuit and is a resident citizen of the State of Mississippi.

10. Defendant, Verna Ball Cook (Cook), on information and belief, was the nursing home administrator for Greenville Convalescent Home, on or about certain dates relevant to this lawsuit and is a resident citizen of the State of Mississippi.

11. Defendant, Mollie Rogers Copeland, is Executrix of the Estate of Doris Bariola (Bariola), deceased in Case No. P-January 24, 1992-98-2, Probate Court of Chicot County, Arkansas. Bariola was at all times material hereto the licensee of Greenville Convalescent Home. At all times material to this lawsuit, Defendant Bariola, did business in Mississippi. Defendant Bariola's contacts with Mississippi were systematic and ongoing such that Defendant Bariola, could have reasonably expected to be haled into a Mississippi court. Bariola was a resident citizen of the State of Arkansas. Mollie Rogers Copeland resides at 1210 Mulberry Acres, Benton, Arkansas 72015.

12. Defendant, Bonnie Hatten (Hatten), on information and belief, was the nursing home administrator for Greenville Convalescent Home, on or about certain dates relevant to this lawsuit and is a resident citizen of the State of Mississippi.

13. Defendant, H. Ken Beebe, Jr. (Beebe) on information and belief, was the nursing home administrator for Greenville Convalescent Home, on or about certain dates relevant to this lawsuit and is a resident citizen of the State of Mississippi.

14. Defendant, Nancy Pryor (Pryor), was certain times material hereto the licensee of Greenville Convalescent Home. Pryor is a resident citizen of the State of Arkansas. Defendant Pryor for all times material to this lawsuit conducted business in Mississippi.

15. Separate Defendants John Does 1 through 10 are individuals whom Plaintiff is currently unable to identify despite diligent efforts. Said Defendants are named pursuant to [Miss. R. Civ. P. 9\(h\)](#), insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of, or in the staffing, supervision, administration and direction of

the care and treatment of, Susie Green during her residency at Greenville Convalescent Home. Alternatively, Defendants are liable for the negligent and/or otherwise tortious acts and/or omissions of others with respect to the care and treatment of Susie Green during her residency at Greenville Convalescent Home.

16. Separate Defendants Unidentified Entities 1 through 10 are entities whom Plaintiff is currently unable to identify despite diligent efforts. Defendants are named pursuant to [Miss. R. Civ. P. 9\(h\)](#), insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of Susie Green during her residency at Greenville Convalescent Home. Alternatively, Defendants are liable for the negligent and/or otherwise tortious acts and/or omissions of others with respect to the care and treatment of Susie Green during her residency at Greenville Convalescent Home.

17. At all times material hereto, Defendants owned, operated and/or controlled Greenville Convalescent Home. The actions of each of Greenville Convalescent Home's servants, agents and employees as set forth herein, are imputed to Defendants.

18. Jurisdiction is proper in the Circuit Court of Washington County in that the amount in controversy, exclusive of interest and costs, exceeds the minimum jurisdictional limits of this Court.

FACTUAL SUMMARY

19. On January 24, 1992, Susie Green was admitted to Greenville Convalescent Home, and she remained a resident of the nursing home until November 7, 2002.

20. Defendants were aware of Susie Green's medical condition and the care that she required when they represented that they could adequately care for her needs.

21. At all relevant times, Defendants held themselves out as being:

- a. Skilled in the performance of nursing, rehabilitative and other medical support services;
- b. Properly staffed, supervised, and equipped to meet the total needs of their nursing home residents;
- c. Able to specifically meet the total nursing home, medical, and physical therapy needs of Susie Green and other residents like her; and,
- d. Licensed and complying on a continual basis with all rules, regulations, and standards established for nursing homes, nursing home licensees and nursing home administrators.

22. Defendants failed to discharge their obligations of care to Susie Green. As a consequence thereof, Susie Green suffered catastrophic injuries, extreme pain and suffering and mental anguish. The scope and severity of the recurrent wrongs inflicted upon Susie Green while under the care of the facility accelerated the deterioration of her health and physical condition beyond that caused by the normal aging process and resulted in physical and emotional trauma, which includes, but is not limited to:

- a. Multiple pressure sores;
- b. Infection surrounding her PEG tube;
- c. Dehydration;
- d. Malnutrition;
- e. Aspiration;

f. Pneumonia;

g. Disfigurement; and

h. Poor hygiene.

23. All of the above identified injuries, as well as the conduct specified below, caused Susie Green to lose her personal dignity; unnecessary pain, degradation, anguish, and emotional trauma.

24. The wrongs complained of herein were of a continuing nature, and occurred throughout Susie Green's stay at Defendants' facility.

25. Plaintiff alleges that on all of the occasions complained of herein, Susie Green was under the care, supervision, and treatment of the agents and/or employees of Defendants and that the injuries complained of herein were proximately caused by the acts and omissions of Defendants named herein.

26. Defendants had vicarious liability for the acts and omissions of all persons or entities under Defendants' control, either directly or indirectly, including their employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools causing or contributing to the injuries of Susie Green.

27. Defendants have joint and several liability for the actions complained of herein because they consciously and deliberately pursued a common plan or design to commit the tortious acts described in this Complaint and these Defendants actively took part in such actions.

***COUNT ONE: NEGLIGENCE AGAINST SEPARATE DEFENDANTS GREENVILLE CONVALESCENT,
ALP, LHCS. LC, LNH, MAGNOLIA, KEPA AND UNIDENTIFIED ENTITIES 1 THROUGH 10***

28. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-27 as if set forth herein.

29. Separate Defendants owed a duty to residents, including Susie Green, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

30. Separate Defendants owed a duty to residents, including Susie Green, to exercise reasonable care in providing care and services in a safe and beneficial manner.

31. Separate Defendants breached this duty by failing to deliver care and services that a reasonably careful person would have provided under similar circumstances and by failing to prevent the mistreatment, **abuse** and neglect of Susie Green.

32. The negligence of Separate Defendants includes, but is not limited to the following acts and omissions:

a. The failure to provide Susie Green with adequate and appropriate hygiene care, including the failure to bathe her daily after each incontinent episode so as to prevent urine and fecal contact with her skin for an extended period of time;

b. The failure to provide Susie Green adequate fluids to prevent dehydration;

c. The failure to adequately feed Susie Green to prevent malnutrition;

- d. The failure to provide and ensure that Susie Green received adequate hygiene and sanitary care to prevent infection to her PEG tube site;
- e. The failure to provide Susie Green with adequate care to prevent aspiration;
- f. The failure to provide Susie Green with adequate care to prevent pneumonia;
- g. The failure to provide adequate turning and repositioning of Susie Green in order to provide pressure relief so as to prevent the formation of pressure sores on her body;
- h. The failure to provide the minimum number of staff necessary to assist the residents, including Susie Green, with their needs;
- i. The failure to provide proper custodial care, and wound care and to prescribe and administer proper medication to prevent Susie Green's existing medical conditions to worsen;
- j. The failure to maintain appropriate records, including the failure to monitor and document significant changes in Susie Green's condition;
- k. The failure to provide sufficient numbers of qualified nursing personnel to meet the total needs of Susie Green;
- l. The failure to increase the number of nursing personnel to ensure that Susie Green:
 - 1. Received timely and accurate care assessments;
 - 2. Received prescribed treatment, medication, and diet;
 - 3. Received necessary supervision; and
 - 4. Received timely nursing and medical intervention due to a significant change in condition.
- m. The failure to provide nursing personnel sufficient in number to ensure that Susie Green attained and maintained her highest practicable level of physical, mental and psychosocial well-Being;
- n. The failure to provide adequate supervision to the nursing staff so as to ensure that Susie Green received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments and medications, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Susie Green;
- o. The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure that Susie Green received appropriate nursing care, in accordance with Defendants' policies and procedures, and the statutorily mandated regulations implemented by the Mississippi Department of Health and its agents, including the Office of Licensing and Certification;
- p. The failure to provide a nursing staff that was properly staffed, qualified, and trained;
- q. The failure to adopt adequate guidelines; policies and procedures for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees - irrespective of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person;
- r. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;

- s. The failure to provide care, treatment, and medication in accordance with physician's orders;
- t. The failure to provide a safe environment;
- u. The failure to maintain medical records on Susie Green in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 - 1. The diagnosis of Susie Green;
 - 2. The treatment of Susie Green; and
 - 3. The assessment and establishment of appropriate care plans of care and treatment; and
- v. The failure to protect Susie Green from harm within the facility.

33. 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 Susie Green.

34. As a direct and proximate result of the negligence of Separate Defendants as set out above, Susie Green suffered injuries, as set forth herein all of which required hospitalization and medical treatment, and all of which required Ms. Green to incur significant hospital and medical expenses.

35. WHEREFORE, based on such conduct of Separate Defendants as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Separate Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT TWO: NEGLIGENCE CLAIM AGAINST DEFENDANTS BARIOLA AND PRYOR

36. Plaintiff hereby re-alleges and incorporates the allegations in paragraphs 1-35 as if fully set forth herein.

37. Separate Defendants Bariola and Pryor were the licensees of Greenville Convalescent Home during the residency of Susie Green. By becoming licensees, Separate Defendants willingly and voluntarily assumed the ultimate responsibility to operate Greenville Convalescent Home in a manner that would ensure that each resident, including Susie Green, met her highest practicable physical, mental and psychosocial well-being.

38. As licensees of Greenville Convalescent Home, Separate Defendants were responsible to ensure that the operation of the facility was in compliance with state and federal statutes and regulations.

39. As licensees of Greenville Convalescent Home, Separate Defendants had a non-delegable duty to ensure that the residents of Greenville Convalescent Home including Susie Green, received adequate and appropriate care that a reasonable person would provide under similar circumstances.

40. As licensees of Greenville Convalescent Home, Separate Defendants were required to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury to a resident of the facility.

41. As licensees of Greenville Convalescent Home, Separate Defendants are vicariously liable for the acts and omissions of all persons or entities under their control.

42. Separate Defendants failed to supervise Greenville Convalescent Home in the manner in which a reasonably prudent person similarly situated would and failed to take steps to ensure that the residents of Greenville Convalescent Home, including Ms. Green, were receiving adequate and appropriate care. The negligence of Separate Defendants includes, but is not limited to, the following acts and omissions:

a. The failure to timely and adequately review records related to the operation of Greenville Convalescent Home in order to ensure that the residents, including Susie Green, received adequate and appropriate care.

b. The failure to ensure that the facility had sufficient numbers of qualified nursing personnel. Such failures resulted in injuries to Susie Green, and include but are not limited to the following:

1. The failure to provide Susie Green with necessary and adequate continence care and assistance with toileting;
2. The failure to provide Susie Green adequate food to prevent malnutrition;
3. The failure to provide Susie Green adequate fluids to prevent dehydration;
4. The failure to provide Susie Green adequate care to prevent aspiration;
5. The failure to provide Susie Green adequate care to prevent pneumonia;
6. The failure to provide Susie Green adequate care to avoid infection of her PEG tube site;
7. The failure to provide Susie Green with adequate and appropriate hygiene care, including the failure to bathe her daily after each incontinent episode so as to prevent urine and fecal contact with her skin for an extended period of time, thereby preventing pressure sores from developing and progressing;
8. The failure to provide and ensure that Susie Green received adequate hygiene and sanitary care to prevent pressure sores from developing and progressing;
9. The failure to provide clean bed linens to Susie Green as needed to prevent urine and fecal contact for an extended period of time;
10. The failure to provide adequate turning and repositioning of Susie Green in order to provide pressure relief so as to prevent the formation of pressure sores on her body;
11. The failure to provide the minimum number of staff necessary to assist the residents with their needs;
12. The failure to maintain appropriate records, including the failure to monitor and document significant changes in Susie Green's condition;
13. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Susie Green;
14. The failure to increase the number of personnel to ensure that Susie Green:

I. Received timely and accurate care assessments;

II. Received prescribed treatment, medication, and diet;

III. Received necessary supervision; and

IV. Received timely intervention due to a significant change in condition;

15. The failure to provide nursing personnel sufficient in number to ensure that Susie Green attained and maintained her highest level of physical, mental and psychosocial well-being;

16. The failure to provide adequate supervision to the nursing staff so as to ensure that Susie Green received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments and medications, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Ms. Green;

17. The failure to adequately assess, evaluate and supervise nursing personnel so as to ensure that Susie Green received appropriate nursing care, in accordance with Defendants' policies and procedures, and the statutorily mandated regulations implemented by the Mississippi Department of Health and its agents, including the Division of Health Facilities Licensure and Certification;

18. The failure to provide a nursing staff that was properly staffed, qualified, and trained;

19. The failure to provide and ensure an adequate nursing care plan based on the needs of Susie Green;

20. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Susie Green changed;

21. The failure to adopt adequate guidelines; policies and procedures for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees - irrespective of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person;

22. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;

23. The failure to properly and timely notify Susie Green' attending physician significant changes in Ms., Green' physical condition,

24. The failure to provide a safe environment;

25. The failure to maintain medical records on Susie Green in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:

I. The diagnosis of Susie Green;

II. The treatment of Susie Green; and

III. The assessment and establishment of appropriate care plans of care and treatment;

26. The failure to provide Susie Green with adequate and appropriate wound care, including timely dressing changes, so as to prevent the aggravation and deterioration of pressure sores on her body; and

27. The failure to provide Susie Green with adequate and appropriate observation and examination for skin breakdown so as to timely and adequately intervene to prevent the formation of pressure sores on her body.

43. A reasonably careful nursing home licensee, operating under similar circumstances, would foresee that the failure to provide the ordinary care listed above would result in devastating injuries to Susie Green.

44. As a direct and proximate result of the negligence of Separate Defendants as set forth above, Susie Green suffered injuries as set forth herein.

45. WHEREFORE, based on the conduct of Separate Defendants as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Separate Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

***COUNT THREE: NEGLIGENCE CLAIM AGAINST SEPARATE DEFENDANTS
COOK, BEEBE, HATTEN, BOSCHERT AND JOHN DOES 1 THROUGH 10***

46. Plaintiff incorporates the allegations in paragraphs 1-45 as if set forth herein.

47. Upon information and belief, Separate Defendants Cook, Beebe, Hatén, Boschert, and John Does 1 through 10 were the administrators of Greenville Convalescent Home during the residency of Susie Green. To the extent the names of the licensed administrators who may have managed this facility during the residency of Ms. Green are determined, all of the following acts are property attributed to them and Plaintiff will seek leave to substitute these individuals as proper party Defendants.

48. As nursing home administrators, Separate Defendants owed a common law duty to act as reasonably prudent nursing home administrators and to prevent all reasonably foreseeable injuries to the residents of Greenville Convalescent Home.

49. As nursing home administrators, Separate Defendants owed a common law duty to remain informed as to events occurring at Greenville Convalescent Home through contact with the various departments that they managed, including, but not limited to, nursing, dietary, therapy, housekeeping, social services, and maintenance. Separate Defendants were required under law to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury, **abuse** or neglect to residents of the home.

50. When Separate Defendants accepted the position of administrator of Greenville Convalescent Home they assumed the duties as set forth in the preceding paragraphs.

51. It is reasonably foreseeable that injuries, **abuse** and neglect to residents of Greenville Convalescent Home, including Susie Green, would occur as a direct result of Separate Defendants' failures to carry out their duties as administrators of the facility.

52. As nursing home administrators, Separate Defendants were centrally involved and actively participated in tortious conduct that directly caused or contributed to the injuries of Susie Green. The following areas describe with specificity the wrongdoings of Separate Defendants that resulted in harm to Ms. Green:

a. Staffing

1. Nursing home residents, including Susie Green, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

2. The administrator is responsible and required to hire and maintain sufficient staff to ensure that these residents' needs are met. Further, the administrator must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.
3. When the administrator, as here, fails to hire and maintain sufficient staff and fails to maintain proper working relationships between the departments of the facility, the residents do not receive adequate and appropriate care.
4. Additionally, when the administrator fails to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.
5. When the administrator fails to hire and maintain sufficient staff, those who are present must take shortcuts with respect to the care provided and are unable to provide adequate and appropriate care to the residents of the facility.
6. Rather than hiring and maintaining sufficient staff Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough coworkers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by the nursing home with the input of the administrator was too low, or such other reasons as will be proven at trial of this matter.
7. Separate Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Susie Green was injured through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.
8. Due to staff shortages at Greenville Convalescent Home Susie Green's medical records were not kept and maintained in accordance with accepted professional standards and practices. This incomplete documentation resulted in further injuries to Ms. Green--the facility was unable to properly understand her condition, changes that occurred in her condition, and whether or not her care plan and dietary assessments were properly modified to address changes in her condition.
9. Separate Defendants owed a non-delegable duty to Susie Green and other residents of Greenville Convalescent Home, during their tenure as administrators, to ensure adequate and appropriate custodial care and supervision through their control over staffing issues. A reasonably prudent nursing home administrator would have known or should have known that injuries would occur to residents such as Susie Green if staffing levels were not maintained within reasonable parameters.
10. With respect to staffing, the failures of Separate Defendants include but are not limited to:
 - I. Ensuring that the staff provided Susie Green adequate hygiene and sanitary care;
 - II. Ensuring that the staff provided Susie Green adequate food to prevent malnutrition;
 - III. Ensuring that the staff provided Susie Green adequate fluids to prevent dehydration;
 - IV. Ensuring that the staff provided Susie Green adequate care to prevent aspiration;
 - V. Ensuring that the staff provided Susie Green adequate care to prevent pneumonia;
 - VI. Ensuring that the staff provided Susie Green adequate care to prevent infection to her PEG tube site;
 - VII. Providing sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Susie Green throughout her residency;

VIII. Ensuring that Susie Green:

- a. Received timely and accurate care assessments;
- b. Received prescribed treatment, medication and diet; and
- c. Was protected from accidental or intentional injuries by the correct use of ordered and reasonable safety measures and proper supervision of staff and other residents;

IX. Keeping Susie Green clean and comfortable and to prevent the formation of bedsores, ulcers and lesions on her body;

X. Providing a safe environment free from preventable **abuse** and neglect;

XI. Ensuring that Susie Green received care, treatment and medication in accordance with physician's orders;

XII. Ensuring that Susie Green was provided with the dignity and respect that all nursing home residents are entitled to receive;

XIII. Providing adequate supervision to the nursing staff to ensure that Susie Green received adequate and proper sanitary care, medications, repositioning, turning and skin care to prevent the formation of bedsores, ulcers and lesions;

XIV. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Greenville Convalescent Home;

XV. Terminating employees at Greenville Convalescent Home assigned to Susie Green that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the Mississippi Department of Health; and

XVI. Assigning nursing personnel at Greenville Convalescent Home consistent with their education and experience and based on:

- a. Susie Green's medical history and condition, nursing and rehabilitative needs;
- b. The characteristics of the resident population residing in the area of the facility where Susie Green was a resident; and
- c. Nursing skills needed to provide care to such resident population.

11. Separate Defendants failed to implement adequate guidelines, policies and procedures for:

I. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Greenville Convalescent Home by the Mississippi Department of Health or any state or federal survey agency;

II. Determining the cause of any such deficiencies, violations or penalties; and

III. Correcting deficiencies or licensure violations or penalties found to exist at Greenville Convalescent Home.

12. Adopting adequate guidelines, policies and procedures for determining whether Greenville Convalescent Home had sufficient numbers of nursing personnel to:

I. Provide 24-hour nursing services;

II. Meet the needs of residents who reside at the facility, including Susie Green; and

III. Meet the total nursing needs of residents, including their activities of daily living.

13. Separate Defendants failed to adopt adequate guidelines, policies and procedures of Greenville Convalescent Home for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at Greenville Convalescent Home regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, **abuse** and neglect to residents of the facility, including Susie Green.

14. Separate Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at Greenville Convalescent Home.

15. Separate Defendants failed to ensure that Susie Green attained and maintained her highest level of physical, mental and psychosocial well-Being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Susie Green.

b. Budgeting or Allocation of Resources

1. As administrators, Separate Defendants were responsible for providing accurate information regarding the monetary needs of the facility to the owners of the nursing home so that a workable budget could be set.

2. As administrators, Separate Defendants were required to administer Greenville Convalescent Home in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-Being of each resident.

3. As administrators, Separate Defendants were responsible for allocating funds within the budget provided them by the owners of the nursing home in a manner that ensured that the needs of the residents, including Susie Green, were met.

4. Separate Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for the proper care of its residents, resulting in the following:

I. Staffing levels that were insufficient to attain or maintain the highest practicable physical, mental and psychosocial well-Being of each residents, including Susie Green, and

II. Shortages of supplies and food necessary to attain or maintain the highest practicable physical, mental and psychosocial well-Being of each resident, including Susie Green.

5. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Separate Defendants appropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Separate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of providing adequate and appropriate care to the residents.

6. The failure to adequately budget and allocate resources to the facility directly caused damages to Susie Green.

c. Corporate Compliance and Reporting

1. As administrators of Greenville Convalescent Home, Separate Defendants were responsible for ensuring that the facility complied with state and federal standards in providing care to the residents of the home. To that end, they were required to file various reports with regulatory entities.

2. As administrators, Separate Defendants were charged with the responsibility of reporting instances of **abuse** and neglect that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Susie Green.

3. Upon information and belief, Plaintiff alleges that Separate Defendants failed to properly recognize and report instances of non-compliance occurring at Greenville Convalescent Home, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Susie Green to place her in the facility and misled them as to the care she would receive at the facility. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Susie Green.

4. Separate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that failed to meet required standards. Upon information and belief, Separate Defendants submitted false claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Susie Green's admissions agreement.

5. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Susie Green.

53. 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 Susie Green.

54. WHEREFORE, based on such conduct of Separate Defendants as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Separate Defendants including, but not limited to, medical expenses, pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

***COUNT FOUR: MEDICAL MALPRACTICE AGAINST GREENVILLE
CONVALESCENT. ALP, LHCS, LC, LNH, MAGNOLIA AND KEPA***

55. Plaintiff hereby re-alleges and incorporates the allegations in paragraphs 1-54 as if fully set forth herein.

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

57. Separate Defendants' employees owed a duty to residents, including Susie Green, to render care and services as a reasonably prudent and similarly situated nursing home employee would render, including, but not limited to, rendering care and services in a safe and beneficial manner.

58. Separate Defendants owed a duty to assist all residents, including Susie Green, in attaining and maintaining the highest level of physical, mental, and psychosocial well-Being.

59. Separate Defendants failed to meet the standard of care and violated their duty of care to Susie Green through mistreatment, **abuse** and neglect. The medical negligence of these Defendants includes, but is not limited to, the following acts and omissions:

- a. The failure to provide proper wound care and to prescribe and administer proper medication to prevent Susie Green' existing medical conditions to worsen;
- b. The failure to properly assess Susie Green for the risk of malnutrition;
- c. The failure to properly assess Susie Green for the risk of dehydration;
- d. The failure to properly assess Susie Green for the risk of aspiration;
- e. The failure to properly assess Susie Green for the risk of pneumonia;
- f. The failure to properly assess Susie Green for the risk of infection to her PEG tube site;
- g. The failure to properly assess Susie Green for the risk of development of pressure sores;
- h. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Susie Green;
- i. The failure to monitor and document significant changes in Susie Green's condition;
- j. The failure to provide and ensure an adequate nursing care plan based on the needs of Susie Green;
- k. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Susie Green changed;
- l. The failure to implement and ensure that an adequate nursing care plan for Susie Green was followed by nursing personnel;
- m. The failure to provide Susie Green with adequate and appropriate observation and examination following an injury so as to timely and adequately provide appropriate emergency medical care;
- n. The failure to provide care, treatment, and medication in accordance with physician's orders;
- o. The failure to properly and timely notify Susie Green's attending physician of significant changes in her physical condition;
- p. The failure to adequately and appropriately monitor Susie Green and recognize significant changes in her health status; and
- q. The failure to respond to significant signs and symptoms of change in the condition of Susie Green.

60. A reasonably prudent nursing home operating under the same or similar conditions, would not have failed to provide the care listed in the above paragraph. Each of the foregoing acts of medical negligence on the part of Separate Defendants was a proximate cause of Susie Green's injuries. Susie Green's injuries were foreseeable to these Defendants.

61. Separate Defendants' conduct in breaching the duties owed to Susie Green was grossly negligent, willful, wanton, malicious and reckless.

62. As a direct and proximate result of such grossly negligent, willful, wanton, reckless and malicious conduct by Separate Defendants, Susie Green suffered injuries and also suffered extreme pain, suffering, and mental anguish, all of which required medical treatment. As a result, Ms. Green incurred significant medical expenses.

63. WHEREFORE, based on the conduct set forth above of Separate Defendants, Plaintiff asserts a claim for judgment for compensatory and punitive damages against these Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT FIVE: MALICE, AND/OR GROSS NEGLIGENCE WHICH EVIDENCES A WILLFUL, WANTON, OR RECKLESS DISREGARD FOR THE SAFETY OF SUSIE GREEN AGAINST ALL DEFENDANTS

64. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-63 as if fully set forth herein.

65. The longevity, scope and severity of the Defendants' failures and actions constitute malice, and/or gross negligence that evidences a willful, wanton or reckless disregard for the safety of others, including Susie Green. Specifically, such conduct was undertaken by Defendants without regard to the health and safety consequences to those residents, such as Susie Green, entrusted to their care. Moreover, such conduct evidences little regard for their duties of care, good faith, and fidelity owed to Ms. Green.

66. The malice, and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Susie Green, includes, but is not limited to the following acts and omissions as alleged in Paragraphs 32, 42, 52 & 59.

67. As a direct and proximate result of the above cited malice, and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Susie Green, she suffered injuries as set forth herein, all of which required Ms. Green to incur significant medical expenses.

68. WHEREFORE, based on such conduct of Defendants, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, and humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT SIX: FRAUD AGAINST ALL DEFENDANTS

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

70. Defendants intentionally engaged in common law fraud, which was a proximate cause of the injuries and damages described herein. Defendants, while claiming or implying special knowledge, concealed and/or misrepresented material facts to Susie Green and her family beginning with her admission on January 24, 1992, and continuing throughout Ms. Green's residency at Greenville Convalescent Home. Defendants either personally, or through their agents or employees, specifically misrepresented that they could and would provide twenty-four hour a day nursing care and supervision to Susie Green during her residency at Greenville Convalescent Home.

71. Defendants made these misrepresentations with the knowledge that they would not and/or could not provide twenty-four hour a day nursing care and supervision to Susie Green during her residency at Greenville Convalescent Home because they were not sufficiently staffed or supplied.

72. The relationship between Defendants and Susie Green and her family was one of trust and confidence, thereby imparting upon Defendants a higher duty to affirmatively speak the truth and to disclose adverse facts to Susie Green and her family because of Ms. Green's age and infirmities and the surrounding circumstances. Defendants' fraudulent conduct includes, but is not limited to, the conduct described above and set forth below.

73. Defendants knowingly concealed or failed to disclose material facts, even though Defendants knew or reasonably should have known, that because of the surrounding circumstances that Susie Green and her family were ignorant of these material facts and did not have an equal opportunity to discover the truth. Specifically, Defendants either personally or through their agents or employees misrepresented the material facts either by omission or affirmative statements that they were willing to, and would, provide the proper care, treatment and services to Susie Green, even though Defendants knew that they would provide as little care, treatment and services as possible in order to maximize Defendants' profits at the expense of Ms. Green.

74. Further, Defendants made the misrepresentations with the intent to induce Susie Green and her family to take some action: specifically, to admit and not remove Ms. Green from Defendants' facility, by concealing or failing to disclose the material facts that there was an epidemic of resident harm and injury, as well as a practice of utilizing insufficient numbers of nursing aides who were not qualified to render care or services, in accordance with the law during Ms. Green's residency from January 24, 1992, until November 7, 2002. As a proximate cause of Defendants' concealment and failure to disclose, these adverse material facts, Susie Green suffered injuries as set forth herein.

75. Susie Green and her family detrimentally relied on Defendants' misrepresentations.

76. Defendants' material misrepresentations beginning on January 24, 1992, and continuing through her discharge were made with knowledge of their falsity and with the intention that such misrepresentations should be relied upon by Susie Green and her family to Ms. Green's detriment. As a consequence and proximate cause of the reasonable and detrimental reliance by Susie Green and her family on these misrepresentations of commission and omission, Ms. Green and her family suffered injury.

77. As a result of Defendants' misrepresentation, Defendants obtained an agreement with, or on behalf of, Susie Green and/or her family, on January 24, 1992, wherein Defendants promised to provide basic care for Ms. Green. As partial consideration for this promise, Susie Green and/or her family agreed to turn over virtually all of her income to these Defendants on a monthly basis. At the time of this agreement, it was known and understood by all parties that Defendants, for good and sufficient consideration, had also entered into agreements with the State of Mississippi and other relevant licensing and regulatory authorities that were designed and intended to be for the benefit and protection of Susie Green and others who were similarly situated. By virtue of these agreements and by direct statement beginning on January 24, 1992, and continuing until her discharge, Defendants either personally or through their agents or employees represented to Susie Green and her family that the care Defendants would provide for Ms. Green would fully comply with the licensing requirements and standards of care specified by the laws and regulations of the State of Mississippi and other relevant licensing and regulatory authorities.

78. At all times relevant to this proceeding, Defendants held themselves out to Plaintiff and the public at large to be a nursing home licensed by the State of Mississippi and certified to provide care to nursing home residents. At all times material to this lawsuit, the aforesaid agreements, obligations and promises, which were a part thereof, were renewed on a monthly basis by virtue of payment made by, or on behalf of, Susie Green, to Defendants for care to be rendered for the upcoming month. Defendants were paid each month in advance of care to be provided pursuant to the admission agreement and promises which were a part thereof, including but not limited to the resident's bill of rights.

79. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT SEVEN: BREACH OF FIDUCIARY DUTY AGAINST ALL DEFENDANTS

80. Plaintiff re-alleges and incorporates the allegations in paragraph 1-79 as if fully set forth herein.

81. Because of her mental and physical infirmities, Susie Green was particularly dependent upon Defendants, their employees and agents for her daily care and well-being. Because of the nature of this dependency, the representations of Defendants that they could and would provide necessary care and the dominant influence Defendants exhorted over Susie Green on a daily basis while she resided at Greenville Convalescent Home, Ms. Green and her family held in all Defendants a special confidence and trust. Defendants accepted this special confidence and trust by admitting Susie Green to their facility and by determining the level of care to be provided to Ms. Green.

82. Susie Green and her family relied upon Defendants' superior knowledge, skill, and abilities, which they held themselves out to possess. Susie Green and her family also relied on the Defendants to provide care for Susie Green who, because of her age and infirmities, was not able to care for herself.

83. By virtue of the nature of the services Defendants provided to Susie Green, the special relationship that existed between Defendants and Ms. Green, the exhortion of influence Defendants had over Ms. Green, the huge disparity of power and unequal bargaining position existing between Defendants and Ms. Green, as well as all of the other surrounding circumstances including but not limited to Susie Green's mental and physical infirmities, Defendants occupied a position of trust and confidence toward Ms. Green that required among other things fidelity, loyalty, good faith, and fair dealing by the Defendants.

84. By accepting payment for services and care that was not provided to Susie Green, and concealing and failing to disclose their **abuse** and neglect of Ms. Green, Defendants breached their confidential and fiduciary duties, namely, the duties of good faith and fair dealing, to Ms. Green by failing to provide the appropriate level of care and services to which he was entitled.

85. As a proximate cause of the foregoing breaches of duty by all of the Defendants, Susie Green suffered injuries as set forth herein.

86. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law. Plaintiff also seeks the imposition of a constructive trust on all wrongful profits and proceeds arising out of Defendants' breach of fiduciary duty to Susie Green.

PRAYER FOR RELIEF

Pursuant to the Mississippi Rules of Civil Procedure, Plaintiff demands that all issues of fact in this case be tried to a jury.

WHEREFORE, Susie Green, by and through Tressie Green, Next Friend, for the use and benefit of Susie Green, and for her causes of action, prays for judgment against all Defendants, as follows:

1. For damages to be determined by the jury, in an amount exceeding the minimum jurisdictional amount of this Court, and adequate to compensate Plaintiff for all the injuries and damage sustained;
2. For all general and special damages caused by the alleged conduct of Defendants;
3. For the costs of litigating this case;
4. For punitive damages sufficient to punish Defendants for their egregious conduct and to deter all Defendants from repeating such atrocities; and
5. For all other relief to which Plaintiff is entitled by Mississippi law.

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