

NORTH CAROLINA
NEW HANOVER COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. _____

2009 FEB 10

NEW HANOVER COUNTY, N.C.

NANCY MAREADY, Administrator of the
Estate of Hildred Highsmith Dixon, Deceased

Plaintiff,

vs.

LIBERTY COMMONS ASSISTED LIVING
OF NEW HANOVER COUNTY, LLC (a
North Carolina Limited Liability Company);
LIBERTY COMMONS NURSING CENTER,
INC. (a North Carolina Corporation);
LIBERTY COMMONS NURSING AND
REHABILITATION CENTER (alias and/or
entity of unknown type); LIBERTY
COMMONS NURSING &
REHABILITATION CENTER
(WILMINGTON, NC) (alias and/or entity of
unknown type); LIBERTY COMMONS
NURSING AND REHABILITATION
CENTER OF NEW HANOVER COUNTY,
LLC (a North Carolina Limited Liability
Company); LIBERTY HEALTHCARE
GROUP, LLC; LIBERTY HEALTHCARE
MANAGEMENT CO., LLC (a North Carolina
Limited Liability Company); LIBERTY
HEALTHCARE MANAGEMENT, INC. (a
North Carolina Corporation); LIBERTY
HEALTHCARE MANAGEMENT (alias
and/or entity of unknown type); LIBERTY
HEALTHCARE SERVICES, LLC (a North
Carolina Limited Liability Company);
LIBERTY LONG TERM CARE, LLC (a
North Carolina Limited Liability Company);
LONG TERM CARE MANAGEMENT
SERVICES, LLC (a North Carolina Limited
Liability Company); LONG TERM
MANAGEMENT (alias and/or entity of
unknown type); and MACON R. DAVIS,

Defendants.

COMPLAINT
(Jury Trial Demanded)

Plaintiff, complaining of Defendants, alleges and says:

INTRODUCTION

1. This action arises from the pain, suffering, and wrongful death of Mrs. Hildred Highsmith Dixon as a result of multiple inexcusable falls and injuries during her residency at a nursing facility operated, owned and/or controlled by Defendants.

THE PARTIES, JURISDICTION & VENUE

Plaintiff Nancy Maready ("PLAINTIFF") and Plaintiff's Decedent Hildred Highsmith Dixon ("HILDRED DIXON")

2. Hildred Highsmith Dixon, deceased ("HILDRED DIXON") was a resident of Liberty Commons Nursing and Rehabilitation Center ("LIBERTY COMMONS WILMINGTON"), 121 Racine Drive, Wilmington, NC; a skilled nursing facility operated and/or owned by Liberty Commons Nursing Center, Inc., and, on information and belief, other of Defendants as alleged herein from approximately February 20, 2004 through approximately March 2, 2004; and suffered personal injuries and damages while a resident there -- and as a result of her residency there -- including, among other things, physical and emotional pain and suffering, as well as medical expenses, related to those injuries and damages; and, ultimately, death as a result of those injuries.

3. HILDRED DIXON died on August 14, 2005 in New Hanover County, North Carolina.

4. HILDRED DIXON died possessed of a claim for personal injuries and damages, which claim survived to HILDRED DIXON'S Estate.

5. PLAINTIFF, has been duly appointed, and is, the Administrator of the Estate of HILDRED DIXON (the "Estate"); and is a citizen and resident of Sampson County, North Carolina.

6. The Estate is an estate opened and pending in New Hanover County, North Carolina, said estate bearing estate file number 07 E 773.

7. PLAINTIFF is the daughter and a responsible party of HILDRED DIXON, and brings this action for HILDRED DIXON'S injuries and damages as a survival action and as a wrongful death action in behalf of HILDRED DIXON'S beneficiaries pursuant to North Carolina law.

Liberty Commons Nursing Center, Inc. ("LICENSEE") d/b/a Liberty Commons Nursing and Rehabilitation Center, Liberty Commons Nursing & Rehabilitation Center (Wilmington, NC) ("LIBERTY COMMONS WILMINGTON")

8. On information and belief, Liberty Commons Nursing and Rehabilitation Center and Liberty Commons Nursing & Rehabilitation Center (Wilmington, NC) are not separate entities or organizations, but rather are trade names or aliases for LICENSEE. PLAINTIFF alleges alternatively, however, that Liberty Commons Nursing and

Rehabilitation Center and Liberty Commons Nursing & Rehabilitation Center (Wilmington, NC) are separate entities, only to the extent that they are in fact separate entities; and deems all allegations made against Liberty Commons Nursing Center, Inc. and/or LIBERTY COMMONS WILMINGTON to be made separately against these entities as well.

9. On information and belief, LICENSEE is now and has been at all times relevant to the allegations herein, a North Carolina corporation with its principal place of business in Wilmington, NC.

10. On information and belief, LICENSEE, does now, and at all times relevant to the allegations herein did, own and operate multiple skilled nursing facilities in North Carolina.

11. On information and belief LICENSEE is now, and at all times relevant to the allegations herein was, the owner and licensee of LIBERTY COMMONS WILMINGTON, a skilled nursing facility located at 121 Racine Drive, Wilmington, NC.

12. Alternatively, to the extent LICENSEE was not at all times relevant to this action the owner and licensee of LIBERTY COMMONS WILMINGTON, on information and belief, LIBERTY COMMONS WILMINGTON is now, and at all times relevant to the allegations herein was, owned, controlled and operated by one or more of the other defendants named in this action, and owned, controlled and operated in the manner further alleged herein.

13. Alternatively, to the extent none of Defendants were at all times relevant to this action the owner and licensee of LIBERTY COMMONS WILMINGTON, PLAINTIFF deems all allegations herein against LIBERTY COMMONS WILMINGTON as an independent entity defendant.

14. All allegations herein involving LIBERTY COMMONS WILMINGTON are also deemed made alternatively and on information and belief against LICENSEE and/or LIBERTY COMMONS WILMINGTON; and all other defendants named in this action.

15. On information and belief, LICENSEE is now, and has been at all times relevant to the allegations herein, 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 LIBERTY COMMONS WILMINGTON.

16. On information and belief, at all times relevant hereto, the majority of all nursing home contracts or admission agreements entered into between LICENSEE and residents of LICENSEE and/or LIBERTY COMMONS WILMINGTON were entered into in North Carolina.

Liberty Commons Assisted Living of New Hanover County, LLC

17. Alternatively, and on information and belief, HILDRED DIXON was during certain relevant times a resident of Liberty Commons Assisted Living of New Hanover County, LLC.

18. All allegations made against LICESNSEE and/or LIBERTY COMMONS WILMINGTON herein are deemed made equally against Liberty Commons Assisted Living of New Hanover County, LLC as well.

Liberty Commons Nursing and Rehabilitation Center of New Hanover County, LLC

19. Alternatively, and on information and belief, Liberty Commons Nursing and Rehabilitation Center of New Hanover County, LLC was at all relevant times the/an owner/operator of the skilled nursing facility located at 121 Racine Drive, Wilmington, NC.

20. All allegations made against LICESNSEE and/or LIBERTY COMMONS WILMINGTON herein are deemed made equally against Liberty Commons Nursing and Rehabilitation Center of New Hanover County, LLC as well.

Certain Defendants' Aliases and Trade Names

21. On information and belief, LIBERTY COMMONS NURSING AND REHABILITATION CENTER is a trade name or alias of Liberty Commons Nursing Center, Inc., and is named in that capacity. However, to the extent that LIBERTY COMMONS NURSING AND REHABILITATION CENTER is a separate entity, that entity is also named in its separate capacity, and all allegations made against Liberty Commons Nursing Center, Inc. herein apply equally to that entity.

22. On information and belief, LIBERTY COMMONS NURSING & REHABILITATION CENTER (WILMINGTON, NC) is a trade name or alias of Liberty Commons Nursing Center, Inc., and is named in that capacity. However, to the extent that LIBERTY COMMONS NURSING & REHABILITATION CENTER (WILMINGTON, NC) is a separate entity, that entity is also named in its separate capacity, and all allegations made against Liberty Commons Nursing Center, Inc. herein apply equally to that entity.

23. On information and belief, LIBERTY HEALTHCARE MANAGEMENT is a trade name or alias of Liberty Healthcare Management, Inc. and/or Liberty Healthcare Management Co., LLC, and is named in that capacity. However, to the extent that LIBERTY HEALTHCARE MANAGEMENT is a separate entity, that entity is also named in its separate capacity, and all allegations made against Liberty Healthcare Management, Inc. and/or Liberty Healthcare Management Co., LLC herein apply equally to that entity.

24. On information and belief, LONG TERM MANAGEMENT SERVICES is a trade name or alias of Long Term Care Management Services, LLC, and is named in that capacity. However, to the extent that LONG TERM MANAGEMENT SERVICES is

a separate entity, that entity is also named in its separate capacity, and all allegations made against Long Term Care Management Services, LLC herein apply equally to that entity.

Allegations Regarding All Organizational Defendants

25. All non-individual defendants are alleged to be, and to have been at all relevant times, entities organized and/or existing under North Carolina law.

26. All non-individual defendants are alleged to have carried out business in, and to have had principal places of business in, New Hanover County, North Carolina, at all times relevant to this complaint.

27. It is alleged that all non-individual defendants, on information and belief, at all times relevant:

- a. Were in the business of operating nursing homes, 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 LIBERTY COMMONS WILMINGTON.
- b. With the exception of LICENSEE, received management fees from nursing homes including LIBERTY COMMONS WILMINGTON.
- c. Provided nurse consultants to LIBERTY COMMONS WILMINGTON that were responsible for quality assurance and overseeing the survey and/or inspection process.
- d. Provided and were paid for providing certain services related to resident care, including the care of HILDRED DIXON.
- e. Were responsible for the daily operations of nursing homes including LIBERTY COMMONS WILMINGTON.
- f. Were responsible for reviewing and approving the budgets for LIBERTY COMMONS WILMINGTON.
- g. Through the budgeting process controlled the number of staff at the nursing home, as well as available supplies.
- h. Were responsible for insuring that LIBERTY COMMONS WILMINGTON had adequate supplies and staff to meet the needs of the residents.
- i. Through its clinical teams/staff was responsible for monitoring resident care at each facility, including LIBERTY COMMONS WILMINGTON.
- j. Were responsible for correcting problems in its nursing facilities, including LIBERTY COMMONS WILMINGTON.

Macon R. Davis ("MACON DAVIS")

28. MACON DAVIS is a citizen and resident of Onslow County, North Carolina.

29. MACON DAVIS was at times relevant to the allegations herein an administrator of LIBERTY COMMONS WILMINGTON, and physically worked at the LIBERTY COMMONS WILMINGTON facility.

30. On information and belief, ADMINISTRATOR 01 worked as an administrator during at least some portion of the residency of HILDRED DIXON at LIBERTY COMMONS WILMINGTON.

NOTICE OF INTENT TO ADD UNIDENTIFIED DEFENDANTS

31. PLAINTIFF has made diligent efforts to identify all necessary and proper defendants to this action. More specifically, these unnamed defendants are those whose 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 HILDRED DIXON during her residency at LIBERTY COMMONS WILMINGTON. To the extent certain persons or entities are not named, PLAINTIFF hereby gives notice that PLAINTIFF has intended that each and every person or entity who has a financial interest in, or any level of control (budgetary, managerial, financial, or otherwise) over, any of the named Defendant entities in this action. To the extent any such person or entity has been omitted, such persons and entities (and/or those individuals who own, direct, or manage such entities) should take notice of PLAINTIFF'S intentions. PLAINTIFF further alleges the existence of a sufficient nexus between one or more of Defendants and such unintentionally omitted parties, such that those omitted parties are deemed to have sufficient notice of this action for purposes of relation back pursuant to N.C. R. Civ. P. 15(c).

JURISDICTION AND VENUE

32. All defendants named herein have now, and had during the relevant times alleged herein, sufficient minimum contacts with North Carolina that are and were systematic and ongoing such that each such defendant could reasonably expect to be haled into a North Carolina court; and which confer jurisdiction upon this court over their persons both pursuant to common law, and North Carolina's long arm jurisdictional statute, N.C. Gen. Stat. §1-75.4. These contacts include, but are not necessarily limited to, the ownership and operation of multiple skilled nursing facilities.

33. This court has subject matter jurisdiction over this matter pursuant to N.C. Gen. Stat. §7A-240 and N.C. Gen. Stat §7A-243.

34. At all times relevant to this cause of action, Defendants have usually done and maintained a business and/or owned property in New Hanover County, North Carolina; having owned and operated LIBERTY COMMONS WILMINGTON.

35. Venue is proper in this court pursuant to N.C. Gen. Stat. §1-79, N.C. Gen. Stat. §1-80 and N.C. Gen. Stat. §1-82.

AGENCY/VICARIOUS LIABILITY

36. On information and belief, at all times relevant to this action, each of the defendants, both individual and organizational, acted in the course and scope of an agency/employment relationship with one or more of the other defendants, and each is vicariously liable for those other defendants' actions and the claims arising therefrom as alleged herein.

37. At all times relevant to this action, each individual defendant named herein was an employee and/or agent of one or more of the other defendants; acted in the course and scope of that employment and/or agency; and those other defendants are liable for each such individual's actions alleged herein.

38. Plaintiff alleges that on all of the occasions complained of herein, HILDRED DIXON 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.

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

40. The Defendants are directly liable for the acts and/or omissions contained herein due to the direct control, ownership, and/or management of the operations of LIBERTY COMMONS WILMINGTON. This exertion of control, ownership, and/or management by the Defendants created a dangerous environment, for all residents, including HILDRED DIXON.

41. On information and belief, the Defendants were aware of the dangerous environment that was created by their methods of management and/or control at all their facilities, including LIBERTY COMMONS WILMINGTON and the harm caused to the residents of LIBERTY COMMONS WILMINGTON, including HILDRED DIXON.

42. Defendants have joint and several liability for the actions complained of herein because they, on information and belief, 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.

43. At all times material hereto, Defendants owned, operated, managed and/or controlled LIBERTY COMMONS WILMINGTON and are therefore directly liable for all the care provided at LIBERTY COMMONS WILMINGTON. The actions of each of LIBERTY COMMONS WILMINGTON's servants, agents and employees as set forth herein (both medical and non-medical), are imputed to each and every defendant in this action, to include unidentified individuals and entities.

44. At all times material hereto, Defendants' representatives and staff (both medical and non-medical) acted as agents and/or employees of Defendants within the course and scope of their agency and/or employment. Consequently, Defendants are vicariously liable to plaintiff for the acts and omissions of their agents/employees under the doctrine of respondeat superior.

**DIRECT LIABILITY OF CO-DEFENDANTS OF LIBERTY COMMONS
WILMINGTON**

45. PLAINTIFF reasserts all allegations whereby LIBERTY COMMONS WILMINGTON is alleged to be liable for the actions and conduct set forth herein. Some or all of the other defendants are liable directly as well

46. On information and belief, each defendant, by virtue of its relationships with some or all of the other defendants, is directly liable for the conduct and claims arising therefrom as alleged herein. Specifically, but not exclusively, at all times relevant, Defendants' ownership and/or control structures among themselves, including the ownership and/or control of LIBERTY COMMONS WILMINGTON, gives rise to liability in accordance with U.S. v. Bestfoods, 524 U.S. 51, 118 S.Ct. 1876 (1998)(direct parental corporate liability), or otherwise.

47. On information and belief, at all relevant times, some or all of Defendants and/or their respective boards of directors fully controlled one or more of the other defendants (some of which are wholly-owned subsidiaries), including LIBERTY COMMONS WILMINGTON, operating as one business, indivisible and indistinguishable from one another.

48. On information and belief, at all times relevant, some or all of Defendants' (and/or their respective boards of directors') management of these nursing facilities, including LIBERTY COMMONS WILMINGTON, included regularly approving reports submitted from the facilities including, labor reports, payroll reports, profit and loss statements, budget reports/analyses, patient reports, and the like.

49. On information and belief, at all times relevant, some or all of Defendants and/or their respective boards of directors controlled and/or were responsible for the training provided to the employees of LIBERTY COMMONS WILMINGTON.

50. On information and belief, at all times relevant, one or more of Defendants' and/or their respective boards of directors set and/or approved and/or controlled the budgets for Defendants' nursing facilities, including LIBERTY COMMONS WILMINGTON.

51. On information and belief, at all times relevant, one or more of Defendants' and/or their respective boards of directors, through and budgeting process, among other things, ultimately controlled, among other things, the number of staff and supplies at its facilities, including LIBERTY COMMONS WILMINGTON.

52. On information and belief, at all times relevant, one or more of Defendants' and/or their respective boards of directors issued checks to vendors and employees of the facilities, including LIBERTY COMMONS WILMINGTON.

53. On information and belief, at all times relevant, one or more of Defendants receives payment for services provided to LIBERTY COMMONS WILMINGTON, or to other of Defendants, at below-market rates; effectively siphoning funds from LIBERTY COMMONS WILMINGTON for the purpose of frustrating the creditors and prospective creditors of LIBERTY COMMONS WILMINGTON, and for the purpose of avoiding the payment of legitimate liabilities arising from the negligent operation of Defendants' facilities, including LIBERTY COMMONS WILMINGTON.

54. On information and belief, at all times relevant, one or more of Defendants was responsible for auditing patient care at each of its facilities, including LIBERTY COMMONS WILMINGTON, to ensure that residents received adequate care.

INCOMPETENCY AND COMPLIANCE WITH LIMITATIONS

Prior Dismissal Without Prejudice

55. This lawsuit is being brought within one year from the previous voluntary dismissal of this action (without prejudice), filed on February 14, 2008 (See File NO. 07 CVS 3597).

HILDRED DIXON's Mental Incompetency

56. HILDRED DIXON, at the time of her admission to LIBERTY COMMONS WILMINGTON, had impaired cognitive skills, and was no longer competent to handle her own affairs.

57. HILDRED DIXON, at the time of her admission to LIBERTY COMMONS WILMINGTON, did not have the conscious awareness necessary to allow her to later recognize that she had been a victim of nursing home abuse or negligence; or that her rights as a nursing home resident had been violated.

58. HILDRED DIXON's incompetency, as previously alleged, continued until the time of her death.

59. HILDRED DIXON's incompetency, as previously alleged, tolled all applicable statutes of limitations and/or repose.

RULE 9(j) COMPLIANCE

60. Plaintiff, through the undersigned counsel, objects to the requirement that Plaintiff comply with Rule 9(j) of the North Carolina Rules of Civil Procedure on the grounds that Rule 9(j) is unconstitutional.

61. Plaintiff objects to the requirements of Rule 9(j) of the North Carolina Rules of Civil Procedure on the grounds that a Rule 9(j) certification is not required in

this case, pursuant to Lewis v. Setty, 130 N.C. Capp. 606, 503 S.E.2d 673 (1998), appeal after remand, 140 N.C. App. 536, 537 S.E.2d 505 (2000); and Taylor v. Vencor, Inc., 136 N.C. App. 528, 525 S.E.2d 201 (2000).

62. Without waiving these objections, the medical and nursing care, or lack thereof (including that given by Defendants' servants, agents, and/or employees), which is the subject of this action has been reviewed by a person(s) reasonably expected to qualify as an expert witness(es) under Rule 702 of the North Carolina Rules of Evidence and who is willing to testify that the care did not comply with the applicable standard of care.

FACTUAL SUMMARY

HILDRED DIXON's Admission to LIBERTY COMMONS WILMINGTON

63. On or about February 20, 2004, HILDRED DIXON was first admitted to LIBERTY COMMONS WILMINGTON.

64. HILDRED DIXON was 75 years old at the time of this admission.

65. HILDRED DIXON's physical and medical condition was such at, at her admission to LIBERTY COMMONS WILMINGTON, she required skilled nursing care 24 hours a day, 7 days a week.

66. HILDRED DIXON was on several occasions discharged from and re-admitted to LIBERTY COMMONS WILMINGTON due to necessary hospitalizations and/or other off-site medical care needs.

67. At each admission to LIBERTY COMMONS WILMINGTON, including the first admission, Defendants, through an implied and/or express agreement, agreed that HILDRED DIXON would become a resident of LIBERTY COMMONS WILMINGTON, and, in exchange, Defendants would provide for HILDRED DIXON, among other things, room, board, 24 hour nursing care, planned and supervised recreation activities, and an individualized plan of care based on her medical, social, dietary, and personal needs while a resident at LIBERTY COMMONS WILMINGTON.

68. HILDRED DIXON met all her contractual obligations to Defendants, express and/or implied.

HILDRED DIXON'S Condition on Admission to LIBERTY COMMONS WILMINGTON

69. On or about February 20, 2004, HILDRED DIXON was transferred from the hospital to Defendant Liberty Commons, whereupon she was admitted with, among other conditions, the following assessment:

- a. Alert and oriented times 1, otherwise disoriented;
- b. Able to respond verbally;

- c. Continent of Bowel and Bladder;
- d. No Contractures;
- e. Full weight bearing with assistance;
- f. High risk for skin impairment/falls;
- g. No pain;
- h. No psychotropic drugs.

70. At the time of her admission to Liberty Commons, HILDRED DIXON had been diagnosed and suffered from dementia, confusion, intermittent urinary tract infections, and was treated with psychotropic drugs.

71. A "birdie" alarm was ordered on February 23.

72. On February 24, Nutrition recommended assistance with feeding, and HILDRED DIXON had indicated a need for assistance with eating.

73. PT and OT documented, prior to February 25, that HILDRED DIXON was confused and disoriented, and it was documented that she had kyphosis.

HILDRED DIXON'S First Fall

74. On February 25, 2004, HILDRED DIXON was left unattended in the dining hall, and without a "birdie alarm" being applied.

75. On February 25, 2004:

- a. HILDRED DIXON fell from her wheelchair while in the dining hall;
- b. The care staff did not detect or assess HILDRED DIXON's injuries, which included a dislocated hip, mental pain and anguish;
- c. HILDRED DIXON was placed back in the wheelchair, and then her bed, without sufficient neurological and physical assessments being performed;
- d. HILDRED DIXON was not transferred to a hospital for treatment at that time, nor treated for her pain and suffering.

76. On February 26, HILDRED DIXON was given physical therapy prior to her dislocation being assessed or diagnosed, again resulting in significant pain and suffering.

77. An x-ray was finally ordered and taken, after which HILDRED DIXON was transferred to a hospital, where she was treated for her injuries.

78. HILDRED DIXON was returned from the hospital to Defendant facility on February 26, 2004, with all of the impairments - physical and mental - as when she left for the hospital.

79. The nursing staff did not apply a "Birdie alarm" or any type of device to remind HILDRED DIXON of her limitations, need for assistance, or restriction from unassisted transfers.

HILDRED DIXON'S Second Fall

80. At approximately 12:30 p.m., February 27, 2004, HILDRED DIXON was found by a CNA on the floor of her bedroom, having fallen out of bed or chair while left unattended.

81. At approximately 3:30 p.m., February 27, HILDRED DIXON was transferred to the hospital, where she presented with a moderate amount of distress and pain.

82. Upon return, HILDRED DIXON was continued in normal treatment, which included the therapies ordered.

83. HILDRED DIXON continued to experience physical impairment in the nature of a rotating and shortening lower extremity, and increased pain, resulting in another hospitalization on March 2, 2004, for what was determined to be a dislocation of the left total hip arthroplasty.

HILDRED DIXON'S Subsequent Hospitalization, Surgery, Decline, and Death

84. The preceding events required HILDRED DIXON to undergo surgery for a full hip replacement.

85. This full hip replacement would not have been necessary but for the conduct of the Defendants outlined previously herein.

86. The stress and trauma of the surgery caused HILDRED DIXON to suffer a stroke or other vascular accident.

87. This stroke left HILDRED DIXON in a state of constant, or near-constant, uncontrollable and spasmodic movement and incomprehensible speech.

88. HILDRED DIXON required more intense skilled nursing care as a result, including, but not limited to, the need for tube-feeding.

89. HILDRED DIXON'S tube feeding resulted in a serious infection.

90. The combination of the stress and trauma of the surgery, the resulting stroke, and the infection, caused HILDRED DIXON to suffer a serious and general decline in health and condition.

91. HILDRED DIXON languished in pain and suffering, and without any meaningful quality of life.

92. The feeding tube inserted into HILDRED DIXON caused her to suffer, and HILDRED DIXON, being demented and otherwise in terrible physical condition, repeatedly removed her feeding tube.

93. After HILDRED DIXON pulled out her own feeding tube numerous times, HILDRED DIXON'S family made the inevitable and humane decision, based on consultation with HILDRED DIXON'S physician and health care providers, to not replace HILDRED DIXON'S feeding tube, so as to allow HILDRED DIXON to pass away and end her horrible suffering.

94. HILDRED DIXON died on August 14, 2005.

95. HILDRED DIXON'S death was proximately caused by Defendants' failures and other conduct alleged throughout this complaint.

Defendants' Specific Failures

96. Defendants are liable for the injuries and death of HILDRED DIXON as further alleged herein, based on, among other things:

97. Failing to properly care plan and implement the plan for fall protection;

98. Failure to implement the recognized need of HILDRED DIXON to be assisted while eating, resulting in her being left unattended in the dining hall;

99. Failure to implement the use of the "Birdie alarm" on HILDRED DIXON while she was left unattended;

100. Failure to do a thorough and disciplined assessment prior to moving HILDRED DIXON to her wheelchair and then bed, after finding her on the floor;

101. Failure to aggressively assess HILDRED DIXON post-fall to recognize her injuries and subsequent pain;

102. Failure to aggressively reassess the fall precautions needed after the fall of February 25, and to implement precautions such as a lowered bed, a lap buddy while in the chair, and a "Birdie alarm";

103. Failure to provide HILDRED DIXON with pain medications sufficient to ensure she is permitted to reside as comfortably as possible;

104. Failure to ensure family and physician were timely and sufficiently notified of a significant incident and potential injury;

105. Subjecting HILDRED DIXON to a regimen of Physical Therapy, while her injuries were left unaddressed by professionals who could treat her dislocation;

106. Subjecting HILDRED DIXON to Physical Therapy, resulting in a subsequent dislocation, or alternatively, while failing to note the continued and developing signs of a dislocation that was found on subsequent x-ray.

107. Failing to sufficiently and adequately assess HILDRED DIXON so as to find that her lower extremity was showing the symptoms of being injured.

Defendants' Obligations, Knowledge, Misrepresentations, and Liability Generally

108. At all times relevant to the allegations herein, LIBERTY COMMONS WILMINGTON was a "Nursing Home" licensed and regulated by the State of North Carolina under Chapter 131E of the North Carolina General Statutes.

109. On information and belief, at all relevant times LIBERTY COMMONS WILMINGTON was accredited by the Commission on the Accreditation of Rehabilitation Facilities ("CARF").

110. On information and belief, at all relevant times LIBERTY COMMONS WILMINGTON was accredited by the Joint Commission on the Accreditation of Healthcare Organizations ("JCAHO").

111. At all times relevant to the allegations herein, LIBERTY COMMONS WILMINGTON received federal funds for health care services for HILDRED DIXON, as well as other residents of that facility.

112. LIBERTY COMMONS WILMINGTON, and Defendants generally, expressly and by implication had the responsibility and non-delegable duty to ensure the health, safety, and welfare of its residents, including HILDRED DIXON, in accordance with the standards of practice and the rules, regulations and laws governing nursing homes in North Carolina, those set forth by CARF and JCAHO, and the standards of practice and the rules, regulations and laws of the United States of America.

113. HILDRED DIXON, although elderly and arguably chronically ill at the time of her admission to LIBERTY COMMONS WILMINGTON, was entitled during her residency at LIBERTY COMMONS WILMINGTON to the same quality of care that would be given to a younger, healthier person.

114. Defendants held themselves out to the public and to the family of HILDRED DIXON 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. Providing around the clock skilled nursing care;

- d. Able to specifically meet the total nursing home, medical, and physical therapy needs of HILDRED DIXON and other residents like her; and,
- e. Licensed and complying on a continual basis with all rules, regulations, and standards established for nursing homes, nursing home licensees and nursing home administrators.

115. Defendants were well aware of HILDRED DIXON's medical condition and the care that she required when they represented that they could adequately care for her needs. Defendants made representations to the family of HILDRED DIXON, either explicitly or implicitly, that the appropriate level of care would be provided when, on information and belief, Defendants knew, because of budgetary restrictions on staffing and supplies, that residents, including HILDRED DIXON, would not get the necessary care.

116. Defendants failed to discharge their obligations of care to HILDRED DIXON. As a consequence thereof, HILDRED DIXON suffered catastrophic injuries, disfigurement, extreme pain, suffering, mental anguish, and death. The scope and severity of the recurrent wrongs inflicted upon HILDRED DIXON 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 falls; and
- b. Death.

117. All of the above identified injuries, as well as the conduct specified below, caused HILDRED DIXON to lose her personal dignity and caused her death to be preceded by extreme and unnecessary pain, degradation, anguish, otherwise unnecessary hospitalizations, disfigurement, and emotional trauma.

118. The wrongs complained of herein were of a continuing nature, and occurred throughout HILDRED DIXON's residency at LIBERTY COMMONS WILMINGTON.

Systemic Violations/Pattern/Practice

119. On information and belief, Defendants were aware of the systemic staffing problems at LIBERTY COMMONS WILMINGTON throughout the residency of HILDRED DIXON via labor, budget and similar reports which were available at all levels of Defendants' corporate and organizational structure, and these staffing failures directly impacted the care to the residents, including HILDRED DIXON.

120. On information and belief, Defendants were aware of the systemic problems within LIBERTY COMMONS WILMINGTON relating to resident care, specifically including: falls.

Damages Generally

121. All damages alleged herein are alleged to be in excess of \$10,000.00.

CLAIM FOR RELIEF: NEGLIGENCE

122. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

123. This claim is asserted against all defendants.

124. Defendants owed a duty to their residents, including HILDRED DIXON, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

125. Defendants' employees owed a duty to residents, including HILDRED DIXON, to exercise reasonable care in providing care and services in a safe and beneficial manner.

126. 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 HILDRED DIXON.

127. The negligence of the Defendants, their employees, agents and consultants, includes, but is not limited to, one or more of the following acts and omissions:

- a. The failure to provide even the minimum number of staff necessary to assist the residents of LIBERTY COMMONS WILMINGTON, including HILDRED DIXON, with their needs;
- b. The failure to protect HILDRED DIXON from harm within the facility;
- c. The failure to maintain appropriate records, including failure to monitor and document significant changes in HILDRED DIXON's condition;
- d. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of HILDRED DIXON;
- e. The failure to increase the number of personnel to ensure that HILDRED DIXON:
 - i. received proper assistance with activities of daily living;
 - ii. received necessary supervision; and
 - iii. received timely intervention by proper medical staff.

- f. The failure to provide nursing personnel sufficient in number to ensure that HILDRED DIXON attained and maintained her highest level of physical, mental and psychosocial well-being;
- g. The failure to provide adequate supervision to the nursing staff so as to ensure that HILDRED DIXON received sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of HILDRED DIXON;
- h. The failure to provide a nursing staff that was properly staffed, qualified, and trained;
- i. The failure to provide and ensure an adequate nursing care plan based on the needs of HILDRED DIXON;
- j. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of HILDRED DIXON changed;
- k. The failure to provide supervision to ensure that an adequate nursing care plan for HILDRED DIXON was followed by nursing personnel;
- l. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- m. The failure to maintain medical records on HILDRED DIXON 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 HILDRED DIXON;
 - ii. the treatment of HILDRED DIXON; and
 - iii. the assessment and establishment of appropriate care plans of care and treatment.
- n. The failure to adequately and appropriately monitor HILDRED DIXON and recognize significant changes in her health status.

128. 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 HILDRED DIXON.

129. As a direct and proximate result of Defendants' negligence, HILDRED DIXON suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls and joint dissolutions.

130. As a direct and proximate result of the negligence of Defendants as set out above, HILDRED DIXON also incurred significant hospital and medical expenses.

131. As a direct and proximate result of the negligence of Defendants, individually and collectively, HILDRED DIXON suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which far exceed \$10,000.00.

CLAIM FOR RELIEF: NEGLIGENCE (Nursing Home Administration)

132. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

133. This claim is asserted against defendants MACON DAVIS and all John Doe or unidentified individual defendants.

134. Upon information and belief, these specific Defendants were the administrators of LIBERTY COMMONS WILMINGTON during the residency of HILDRED DIXON. To the extent the names of the licensed administrators who may have managed this facility during the residency of HILDRED DIXON are determined, all of the following acts are properly attributed to them and PLAINTIFF will seek leave to substitute these individuals as proper party Defendants.

135. As nursing home administrators, these 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 LIBERTY COMMONS WILMINGTON.

136. As nursing home administrators, these Defendants owed a common law duty to remain informed as to events occurring at LIBERTY COMMONS WILMINGTON through contact with the various departments that they managed, including, but not limited to, nursing, dietary, therapy, housekeeping, social services, and maintenance. These 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 LIBERTY COMMONS WILMINGTON.

137. When these Defendants accepted the position of administrator of LIBERTY COMMONS WILMINGTON they assumed the duties as set forth in the preceding paragraphs.

138. It is reasonably foreseeable that the injuries, abuse and neglect to residents of LIBERTY COMMONS WILMINGTON, including HILDRED DIXON, would occur as a direct result of these Defendants' failures to carry out their duties as administrators of the facility.

139. As nursing home administrators, these Defendants were centrally involved and actively participated in tortious conduct that directly caused or contributed to the injuries of HILDRED DIXON. The following areas describe with specificity the

wrongdoings of these Defendants that resulted in harm to HILDRED DIXON, on information and belief:

a. Staffing

- i. Nursing home residents, including HILDRED DIXON, 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 comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- ii. The Defendants are responsible and required to hire and maintain sufficient staff to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, the Defendants must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.
- iii. When the Defendants, as here, fail to hire and maintain sufficient staff and fail to maintain proper working relationships between the departments of the facility, the Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- iv. Additionally, when the Defendants fail to hire and maintain sufficient staff, the staff who are present are unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through no fault of their own.
- v. When the Defendants fail to hire and maintain sufficient staff, those who are present must take shortcuts with respect to compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations and were unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- vi. Rather than hiring and maintaining sufficient staff, 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 co-workers to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, or because of deplorable working conditions, or because the pay set by the Defendants was too low, or such other reasons as will be proven at trial of this matter.

- vii. 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. Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.
 - viii. Due to staff shortages at LIBERTY COMMONS WILMINGTON, HILDRED DIXON's medical records were not kept and maintained in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
 - ix. Defendants owed a non-delegable duty to HILDRED DIXON and other residents of LIBERTY COMMONS WILMINGTON, to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their control over staffing issues. A reasonably prudent nursing home operator would have known or should have known that injuries would occur to residents such as HILDRED DIXON if staffing levels were not maintained within reasonable parameters and comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- b. On information and belief, these Defendants failed to implement adequate guidelines, policies and procedures for:
- i. Ensuring that HILDRED DIXON was provided with the dignity and respect that all nursing home residents are entitled to receive;
 - ii. With respect to staff, adequately screening, evaluating and checking references, testing for competence, and using ordinary care in selecting nursing personnel to work at LIBERTY COMMONS WILMINGTON;
 - iii. Terminating employees at LIBERTY COMMONS WILMINGTON 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 state of North Carolina;
 - iv. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at LIBERTY COMMONS WILMINGTON by the state of North Carolina, or any state or federal survey agency;
 - v. Determining the cause of any such deficiencies, violations or penalties; and

- vi. Correcting deficiencies or licensure violations or penalties found to exist at LIBERTY COMMONS WILMINGTON.
- c. On information and belief, these Defendants failed to adopt adequate guidelines, policies, and procedures for determining whether LIBERTY COMMONS WILMINGTON had sufficient numbers of nursing personnel to:
 - i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;
 - ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- d. These Defendants failed to adopt adequate guidelines, polices, and procedures of LIBERTY COMMONS WILMINGTON for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at LIBERTY COMMONS WILMINGTON 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 HILDRED DIXON.
- e. These Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations at LIBERTY COMMONS WILMINGTON.
- f. These Defendants failed to ensure that HILDRED DIXON attained and maintained her highest level of psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to HILDRED DIXON.
- g. On information and belief, Defendants had the following failures with respect to budgeting or allocation of resources:
 - i. Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.
 - ii. Defendants were required to administer LIBERTY COMMONS WILMINGTON in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

- iii. Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- iv. Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:
 - 1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each residents, including HILDRED DIXON, and
 - 2. Shortages of supplies and food necessary to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including HILDRED DIXON.
- v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Defendants inappropriately 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 of LIBERTY COMMONS WILMINGTON. Rather, these Defendants only enhanced the profits of LIBERTY COMMONS WILMINGTON, 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 compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- vi. The failure to adequately budget and allocate resources to the facility directly caused damages to HILDRED DIXON.
- h. On information and belief, Defendants had the following failures with respect to corporate compliance and reporting:
 - i. Defendants were responsible for ensuring that the facility complied with state and federal standards and regulations as to the residents of LIBERTY COMMONS WILMINGTON. To that end, they were required to file various reports with regulatory entities.
 - ii. Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations 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 HILDRED DIXON.

- iii. Upon information and belief, Plaintiff alleges that Defendants failed to properly recognize and report instances of non-compliance occurring at LIBERTY COMMONS WILMINGTON, 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 HILDRED DIXON 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 HILDRED DIXON.
- iv. These 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 did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, these Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of HILDRED DIXON's admissions agreement.
- v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to HILDRED DIXON.

140. 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 HILDRED DIXON.

141. As a direct and proximate result of Defendants' negligence, HILDRED DIXON suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls and joint dissolutions.

142. As a direct and proximate result of the negligence of Defendants as set out above, HILDRED DIXON also incurred significant hospital and medical expenses.

143. As a direct and proximate result of the negligence of Defendants, individually and collectively, HILDRED DIXON suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which far exceed \$10,000.00.

CLAIM FOR RELIEF: MEDICAL MALPRACTICE

144. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

145. This claim is asserted against all defendants.

146. Although the specific defendants other than LIBERTY COMMONS WILMINGTON and LICENSEE are not alleged to be "health care providers" as defined and contemplated by N.C. Gen. Stat. §90-21.11 et seq., Plaintiff's claims for medical malpractice are nonetheless alternatively asserted against those specific defendants (both directly and via vicarious liability), in the event that the Court determines those defendants to in fact be "health care providers."

147. All Defendants are jointly and severally liable for the medical malpractice negligence of any or all of the other defendants, on the basis of those defendants' agency, employment, or other relationships.

148. Alternatively, to the extent that the Court deems those specific defendants to be "health care providers," Plaintiff's claims for medical malpractice are asserted against those specific defendants as well.

149. The acts and omissions of Defendants constitute negligence on the part of the Defendants, in that the Defendants:

- a. Owed a duty to provide HILDRED DIXON with medical care and treatment in accordance with the standards and practices applicable to medical personnel with similar training and experience in the same or similar communities at the time of the acts and omissions alleged herein.
- b. Failed to exercise and/or possess a requisite degree of professional learning, skill, ability and care as are ordinarily possessed and exercised by other health care providers similarly situated considering the state of nursing and medical knowledge at the time;
- c. Failed to exercise their best medical judgment in the treatment and care of HILDRED DIXON;
- d. Failed to exercise reasonable care and diligence in the application of their knowledge, skill and ability in the care and treatment of HILDRED DIXON; and
- e. Failed to furnish nursing and medical services to HILDRED DIXON in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in similar communities at the time of HILDRED DIXON's treatment as required by N.C. Gen. Stat. § 90-21.12.

150. As a direct and proximate result of Defendants' negligence, HILDRED DIXON suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls and joint dissolutions.

151. As a direct and proximate result of the negligence of Defendants as set out above, HILDRED DIXON also incurred significant hospital and medical expenses.

152. As a direct and proximate result of the negligence of Defendants, individually and collectively, HILDRED DIXON suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which far exceed \$10,000.00.

CLAIM FOR RELIEF: FRAUD

153. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

154. This claim is asserted against all defendants.

155. All allegations related to fraud herein are deemed made against each and every specific defendant, and on information and belief.

156. It is specifically alleged that the misrepresentations alleged herein to constitute the basis of Plaintiff's fraud claims were made by each and every one of Defendants, either through their respective agents/employees, or directly.

157. As to each and every representation alleged herein, it is specifically alleged that Defendant made said representations to HILDRED DIXON and/or her family and/or her legal representatives, relating to material facts; that the representations were false; that Defendants knew the representations were false when made, or made them recklessly without any knowledge of their truth or falsity, as positive assertions; that Defendants made the representations with the intention that they would be acted upon by HILDRED DIXON and/or her family and/or her legal representatives; that HILDRED DIXON and/or her family and/or her legal representatives relied upon the representations and acted upon them; and that this reliance upon the representations was reasonable.

158. Based on information and belief during the admission process of HILDRED DIXON, Defendants made specific representations by and through their agent(s), some or all of whom are specific defendants in this legal action, that they would provide HILDRED DIXON with the care and treatment that she required based on her needs.

159. During the admission process on or about that time, some or all of Defendants made specific representations to HILDRED DIXON and her family and/or legal representatives via the admission agreement that is required by law. Based on information and belief this admission agreement sets out that the facility will provide 24 hour a day general nursing care, personal assessment, social services, and such other

personal services as may be required pursuant to the plan of care prepared by the nursing home.

160. Defendants were obligated to represent the care and services to be provided, under then-current rules and regulations. On information and belief, Defendants knew or should have known at the time HILDRED DIXON was admitted that based on past experiences with other residents, communication with current and former employees, State and Federal Surveys, and multiple lawsuits alleging resident neglect that they would not be able to meet the needs of HILDRED DIXON or provide the level of care required pursuant to the plan of care prepared for HILDRED DIXON.

161. Additionally, and on information and belief, during this admission process, Defendants were required to provide specific information to HILDRED DIXON and her family as indicated in the admission agreement. Said information included "The Resident Handbook" and "Resident/Patient Rights" which contain additional representations made to HILDRED DIXON and her family as to the quality and quantity of services that would be provided to HILDRED DIXON during her residency.

162. Defendants, on information and belief, while claiming and/or implying special knowledge and holding themselves out as being a properly operated nursing home, concealed and misrepresented material facts from/to HILDRED DIXON and her family. Defendants, on information and belief, specifically and intentionally misrepresented that they could and would provide twenty four hour a day nursing care and supervision to HILDRED DIXON, when, in fact, Defendants knew that they would not do so and they were not sufficiently staffed or supplied to do so.

163. The relationship between Defendants and HILDRED DIXON and her family was one of trust and confidence, and Defendants had a higher duty to affirmatively speak the truth to HILDRED DIXON and her family because of HILDRED DIXON's age and infirmities. Defendants' fraudulent conduct includes, but is not limited to, the conduct described and set forth below.

164. On information and belief, Defendants engaged in intentional fraud by concealing or failing to disclose material facts within Defendants' knowledge, when Defendants knew that HILDRED DIXON and her family were ignorant of these material facts and did not have an equal opportunity to discover the truth. Specifically, but not exclusively, Defendants misrepresented the material fact that they were willing to, and would, provide the proper care, treatment, and services to HILDRED DIXON, when in fact, Defendants knew that they would provide as little care, treatment, and services as possible in order to maximize Defendants' profits at the expense of HILDRED DIXON.

165. Further, on information and belief, Defendants intended to induce HILDRED DIXON and her family to take some action: to wit, to admit and then allow HILDRED DIXON to remain in 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. As a proximate cause of the concealment and failure to disclose by Defendants HILDRED DIXON and her family suffered injury as described herein.

166. On information and belief, Defendants perpetuated a continued concealment of the truth, throughout the duration of HILDRED DIXON's residency(ies), related to the adequacy of the staffing and supplies available at the nursing home from which to provide care to HILDRED DIXON. During the time frame of HILDRED DIXON's residency the Defendants had information available indicating that they were insufficiently staffed and supplied to provide the care needed to HILDRED DIXON via the following types of reporting:

- i. Labor (turnover reports, payroll reports, etc.)
- ii. Quality
- iii. Budget
- iv. Resident Census
- v. Resident Condition
- vi. State and Federal Surveys
- vii. Hotline or other complaints
- viii. Reports from consultants; and
- ix. Lawsuits, settlements and and jury awards.

167. The failure to disclose special knowledge of the manner in which the Defendants operated the nursing home was an intentional concealment of the truth by these same Defendants. This intentional concealment by Defendants was a deliberate nondisclosure designed to prevent HILDRED DIXON and her family from learning the truth so that she would be admitted to and remain at the facility.

168. HILDRED DIXON and her family relied on the Defendants as experts in the area of nursing home care and placed their trust and confidence in these same Defendants. Due to the material misrepresentations and continued concealment of the truth related to the quality and quantity of staffing and supplies HILDRED DIXON suffered damages as alleged in more detail herein.

169. As a consequence and as a direct proximate result of the reliance on these misrepresentations, and their detrimental reliance upon same, HILDRED DIXON and her family suffered damages and failed to receive the quality and quantity of care that was paid for.

170. As a direct and proximate result of the intentional misrepresentations of Defendants as set out above, and the reliance upon the same by HILDRED DIXON and/or her family and legal representatives, HILDRED DIXON suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and,

ultimately, death. Specifically, but not exclusively, these damages and injuries included falls and joint dissolutions.

171. As a direct and proximate result of the intentional misrepresentations of Defendants as set out above, and the reliance upon the same by HILDRED DIXON and/or her family and legal representatives, HILDRED DIXON also incurred significant hospital and medical expenses.

172. As a direct and proximate result of the intentional misrepresentations of Defendants as set out above, and the reliance upon the same by HILDRED DIXON and/or her family and legal representatives, , HILDRED DIXON suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which far exceed \$10,000.00.

CLAIM FOR RELIEF: PREMISES LIABILITY

173. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

174. This claim is asserted against all defendants.

175. Defendants, during the time they owned, operated, managed, and/or controlled LIBERTY COMMONS WILMINGTON, had a duty to warn patrons/residents, including Plaintiff, of dangerous conditions of which Defendants knew existed, or reasonably should have known existed in the exercise of reasonable care, and particularly dangerous conditions that were willfully, wantonly, and/or intentionally created by Defendants, including but not limited to the failure to adequately staff the facility, adequately train the staff, provide adequate support for the staff, adequately budget, fund, or spend sufficient sums to provide adequate and appropriate healthcare to the residents which posed a foreseeable threat to the residents of LIBERTY COMMONS WILMINGTON.

176. Defendants were negligent in failing to warn residents, including the Plaintiff, of, on information and belief, known insufficient staffing problems occurring while Defendants owned, operated, managed, and/or controlled LIBERTY COMMONS WILMINGTON.

177. Defendants owed a duty to exercise reasonable care to correct dangerous conditions, including but not limited to the failure to adequately staff the facility, adequately train the staff, provide adequate support for the staff, adequately budget, fund, or spend sufficient sums to provide adequate and appropriate health care, for the safety of their residents including Plaintiff.

178. Defendants owed a duty to the residents, including HILDRED DIXON, to provide safe living conditions.

179. Defendants having years of experience owning, operating, and/or managing nursing homes across the country have set in place numerous systems and reports to provide information on occurrences, conditions, and events involving

patrons/residents in their nursing homes including LIBERTY COMMONS WILMINGTON, which provided Defendants with the notice and knowledge of the conditions alleged herein or reasonably should have placed Defendants on notice of said conditions.

180. The systems and reports available to Defendants include but are not limited to:

- a. Labor (turnover reports, payroll reports, etc.)
- b. Quality
- c. Budget
- d. Resident Census
- e. Resident Condition
- f. State and Federal Surveys
- g. Hotline or other complaints
- h. Reports from consultants; and
- i. Lawsuits, settlements and and jury awards.

181. Defendants were negligent in the following acts and/or omissions which contributed to causing the dangerous conditions complained of:

- a. The failure to provide even the minimum number of staff necessary to assist the residents with their needs;
- b. The failure to protect HILDRED DIXON from harm within the facility;
- c. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in HILDRED DIXON's condition;
- d. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of HILDRED DIXON;
- e. The failure to provide a nursing personnel that was properly staffed, qualified, and trained;
- f. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;

- g. The failure to ensure sufficient and appropriate supplies were available to meet the needs of the residents, including HILDRED DIXON;
- h. The failure to ensure that the facility was properly budgeted to ensure that residents' needs were met, including HILDRED DIXON'S.

182. Defendants failed to warn the residents, including HILDRED DIXON and HILDRED DIXON'S family of these dangerous conditions created by Defendants at LIBERTY COMMONS WILMINGTON.

183. As a direct and proximate result of Defendants' negligence, HILDRED DIXON suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls and joint dissolutions.

184. As a direct and proximate result of the negligence of Defendants as set out above, HILDRED DIXON also incurred significant hospital and medical expenses.

185. As a direct and proximate result of the negligence of Defendants, individually and collectively, HILDRED DIXON suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which far exceed \$10,000.00.

CLAIM FOR RELIEF: UNFAIR AND DECEPTIVE TRADE PRACTICES (N.C. Gen. Stat. §75-1.1)

186. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

187. This claim is asserted against all non-individual defendants, other than LICENSEE.

188. These defendants were not members of a learned profession.

189. At all times complained of herein, these specific defendants were engaged in "commerce" within the intent and meaning of N.C. Gen. Stat. §§75-1.1 et seq.

190. At all times complained of herein, HILDRED DIXON, either directly or through her authorized agents, was engaged in "commerce" within the intent and meaning of N.C. Gen. Stat. §§75-1.1 et seq.

191. On information and belief, these defendants specifically, but not exclusively:

- a. Asserted control over LIBERTY COMMONS WILMINGTON as previously alleged herein, in such a manner as to cause the inadequacy of the services offered and/or provided to HILDRED DIXON, as well as the dangerous conditions existing at the facility; including by controlling the budgets and finances and other operational policies and procedures;

ultimately affecting the quality of the services as LIBERTY COMMONS WILMINGTON;

- b. Made implicit and/or explicit representations about the adequacy of services to be provided to HILDRED DIXON at LIBERTY COMMONS WILMINGTON, including the level of staffing, capabilities and qualifications of facility staff, the safety of that facility generally, and the and quality of care generally at that facility; despite knowledge (through budget and financial controls and otherwise) of these facility inadequacies;
- c. Failed and/or refused to disclose to HILDRED DIXON and her family and legal representatives these inadequacies dangerous conditions;
- d. Engaged in this type of behavior on a widespread basis, such that these defendants caused a widespread pattern and/or practice of understaffing at Defendants' facilities and thereby created a dangerous atmosphere for patients/residents in Defendants' care in large numbers of Defendants' facilities, and over a substantial period of time; and
- e. Engaged in the other conduct alleged herein previously.

192. The conduct alleged herein with respect to these specific defendants was not a rendering of professional services by these specific defendants. Rather, the actual conduct was in the course of these defendants' organizational activities, including financial control, budgeting, marketing, and the establishment of policies and procedures, among other things.

193. This conduct was immoral, oppressive, unscrupulous or substantially injurious to consumers.

194. The above conduct, and other conduct alleged herein on the part of these defendants constitutes unfair and deceptive trade practices within the intent and meaning of N.C. Gen. Stat §§75-1.1 et seq.

195. As a direct and proximate result of this conduct, HILDRED DIXON and Plaintiff was damaged, and continues to be damaged, in an amount unknown to them at this time, but which, on information and belief, exceeds \$10,000.00.

196. In addition to compensatory damages, Plaintiff is entitled to recover treble damages and attorney fees as provided by law.

197. Plaintiff reserves the right to elect as between treble damages due Plaintiff as alleged herein, and punitive damages as alleged herein, to the extent these damages are mutually exclusive.

CLAIM FOR RELIEF: WRONGFUL DEATH

198. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

199. This claim is asserted against all defendants.

200. As a direct and proximate result of the negligence and/or medical malpractice of the Defendants as set forth previously herein, HILDRED DIXON suffered injuries and harm resulting in her death.

201. As a direct and proximate result of the death of HILDRED DIXON, Plaintiff and next of kin have been deprived of the care, assistance, society, companionship, and kindly offices of HILDRED DIXON.

202. As a direct and proximate result of the negligence of Defendants and the ultimate death of HILDRED DIXON caused thereby, HILDRED DIXON's estate incurred medical expenses, other out of pocket expenses, and funeral expenses.

203. Pursuant to the wrongful death statute of North Carolina, N.C. Gen. Stat. §28A-18.2, and other applicable statutes in effect on the date of HILDRED DIXON's death, demand is made for damages caused by the unlawful and wrongful death of HILDRED DIXON as previously alleged, and is set forth in detail in N.C. Gen. Stat. §28A-18.2, to which reference is made and including the following:

- a. Hospital, medical, and ambulance expenses incident to the deadly injuries of HILDRED DIXON;
- b. Compensation for HILDRED DIXON's pain and suffering;
- c. The reasonable funeral expenses of HILDRED DIXON;
- d. The services, protection, care, and assistance of HILDRED DIXON, whether voluntary or obligatory to the persons entitled to the damages recovered;
- e. The society, companionship, comfort, and kindly offices of HILDRED DIXON to the persons entitled to the damages recovered.

204. By reason of the wrongful death of HILDRED DIXON, Plaintiff has been damaged and is entitled to recover of the Defendants a lump sum sufficient to compensate the estate of HILDRED DIXON for the present monetary value of HILDRED DIXON to her family, and for her services, protection, care and assistance, society, companionship, security, comfort and kindly offices to her next of kin and for funeral, hospital and medical expenses, all in an amount to be determined by a jury, but in any event an amount in excess of Ten Thousand Dollars (\$10,000.00).

205. By reason of the wrongful death of HILDRED DIXON, which was proximately caused by the negligent, willful, wanton, reckless, and gross acts of negligence by Defendants, as previously herein alleged, Plaintiff is entitled to recover punitive damages in an amount in excess of \$10,000.00. The specific aggravating factors supporting punitive damages for wrongful death are set out under a separate claim for relief herein, and the same allegations are hereby incorporated herein by reference as if fully set forth.

**CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY AND
CONSTRUCTIVE TRUST**

206. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

207. This claim is asserted against all defendants except MACON DAVIS.

208. As a resident of LIBERTY COMMONS WILMINGTON, HILDRED DIXON was particularly dependent for her daily care and well-being upon Defendants, their employees and agents. Because of the nature of this dependency and the representations of Defendants that they could and would provide necessary care, HILDRED DIXON and her family held in Defendants a special confidence and trust which Defendants accepted by admitting HILDRED DIXON to their facility, and by determining the level of care to be provided to HILDRED DIXON.

209. HILDRED DIXON and her family relied upon the supposed superior knowledge, skill, and abilities of Defendants that Defendants held themselves out to have. HILDRED DIXON and her family also relied on Defendants to provide care for HILDRED DIXON, who, because of her age and infirmities, was not able to care for herself.

210. By virtue of the nature of the services rendered to HILDRED DIXON by Defendants, and the special relationship which developed between Defendants and HILDRED DIXON, as well as the huge disparity of power and unequal bargaining position existing between Defendants and HILDRED DIXON, Defendants occupied a position of high trust and confidence toward HILDRED DIXON which required fidelity, loyalty, good faith, and fair dealing by Defendants.

211. Defendants breached their fiduciary duty and duty of good faith and fair dealing to HILDRED DIXON by failing to provide the appropriate level of care and services to which HILDRED DIXON was entitled, by accepting payment for services and care not provided to HILDRED DIXON, and by their concealment of and failure to disclose Defendants' abuse and neglect of HILDRED DIXON.

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

213. As a direct and proximate result of Defendants' breaches, HILDRED DIXON suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls and joint dissolutions.

214. As a direct and proximate result of the breaches of Defendants as set out above, HILDRED DIXON also incurred significant hospital and medical expenses.

215. As a direct and proximate result of the breaches of Defendants, individually and collectively, HILDRED DIXON suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which far exceed \$10,000.00.

216. Additionally, Plaintiff seeks the imposition of a constructive trust on all wrongful profits and proceeds arising out of Defendants' breaches of their fiduciary duties to HILDRED DIXON.

CLAIM FOR RELIEF: PIERCE THE CORPORATE VEIL

217. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

218. This claim is asserted against all defendants other than MACON DAVIS.

219. On information and belief, some or all these specific Defendants exercised complete domination and control over LIBERTY COMMONS WILMINGTON, such that LIBERTY COMMONS WILMINGTON was at all relevant times, and is now, a mere instrumentality and alter ego of the other of these Defendants; and such that LIBERTY COMMONS WILMINGTON had at relevant times, and now has, no independent identity.

220. Specifically, but not exclusively, some or all of these Defendants' were/are, on information and belief:

- a. Undercapitalized;
- b. Non-compliant with corporate or entity formalities;
- c. The result of an excessive fragmentation of these Defendants' nursing home operations into separate corporations;
- d. Insolvent; and/or
- e. Participants in the siphoning of funds from LIBERTY COMMONS WILMINGTON.

221. On information and belief, these Defendants used that domination and control to perpetrate a wrong or fraud against HILDRED DIXON and others.

222. The wrongs and fraud so perpetrated are set out in detail previously herein; and include specifically, but not exclusively, the failure and refusal to fully and appropriately staff LIBERTY COMMONS WILMINGTON such that proper care could be given to HILDRED DIXON and other residents of these Defendants' facilities; and such that the injuries and death of HILDRED DIXON as previously alleged could have been avoided.

223. The wrongs and fraud so perpetrated also include the frustration of:

- i. HILDRED DIXON'S (and her family's) ability to get fair compensation for their respective damages and injuries as alleged previously herein; and
- ii. Other creditors' and claimants' ability to collect the valid debts and obligations of Defendants, for personal injury and wrongful death damages similar to those alleged herein, and otherwise.

224. As a direct and proximate result of these Defendants' control of LIBERTY COMMONS WILMINGTON as alleged, HILDRED DIXON suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls and joint dislocations.

225. As a direct and proximate result of these Defendants' control of LIBERTY COMMONS WILMINGTON as alleged, HILDRED DIXON also incurred significant hospital and medical expenses.

226. As a direct and proximate result of these Defendants' control of LIBERTY COMMONS WILMINGTON as alleged, individually and collectively, HILDRED DIXON suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which far exceed \$10,000.00.

CLAIM FOR RELIEF: PUNITIVE DAMAGES

227. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

228. This claim is asserted against all defendants, and on information and belief.

229. The acts and omissions of Defendants as alleged previously herein were reckless, willful and/or wanton; and were performed in conscious disregard of and indifference to the rights and safety of resident. Defendants knew or should have known that the above acts or failures to act were reasonably likely to result in severe physical and/or mental suffering, as well as the to the other injuries and damages of HILDRED DIXON alleged previously herein.

230. The lack of healthcare and conduct of Defendants as previously alleged herein is alleged to be self-explanatory and obvious for purposes of supporting punitive damages, and all allegations herein are alleged to so support this claim. Nonetheless, Plaintiff alleges specifically, but not exclusively, that the conduct of Defendants supporting punitive damages includes:

- a. Understaffing

- i. Defendants' conscious disregard for, and encouragement of, understaffing at LIBERTY COMMONS WILMINGTON, as more specifically alleged previously herein.
 - ii. Defendants' knowledge that this understaffing would result in serious harm to LIBERTY COMMONS WILMINGTON residents, including HILDRED DIXON -- as well as residents at other of its facilities -- as more specifically alleged previously herein.
 - iii. Defendants' pursuit of monetary gain via a calculated plan to understaff and/or continue understaffing at its facilities, including LIBERTY COMMONS WILMINGTON, despite the dangers to Defendants' residents at that facility and others. This plan was a widespread pattern and/or practice of Defendants; and had been continuing despite complaints from its residents and their families, including complaints in the form of lawsuits and litigation.
 - iv. The widespread nature of this pattern and/or practice of understaffing at Defendants' facilities created a dangerous atmosphere for patients/residents in Defendants' care in large numbers of Defendants' facilities, and over a substantial period of time.
 - v. Defendants' officers, directors, managers and managing agents at all relevant times knew, or in the exercise of ordinary care should have known, about the understaffing problem at LIBERTY COMMONS WILMINGTON and other of their facilities, and failed to take action to correct the problem; instead ignoring this dangerous problem, and continuing to drain money/assets away from its facilities, including LIBERTY COMMONS WILMINGTON, and ultimately into the accounts of those other persons and businesses controlling its nursing home operations. The resources drained away from these facilities could have been, and should have been, used to increase staffing levels.
- b. Defendants' repeated failure to intervene and care for the serious and life-threatening medical conditions and injuries of HILDRED DIXON, medical conditions and injuries which were clearly life threatening and fully known to Defendants; such medical conditions including, but not limited to high risk for falls and dislocations as set forth previously herein, this failure ultimately leading to falls, dislocations and death.
 - c. Defendants defrauded HILDRED DIXON and her family as set forth more specifically in the claim for relief for fraud, above.

231. As a direct and proximate result of Defendants' reckless, willful and wanton conduct, HILDRED DIXON suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death.

Specifically, but not exclusively, these damages and injuries included falls and joint dislocations.

232. Plaintiff is therefore entitled to punitive damages in an amount sufficient to deter Defendants and others similarly situated from engaging in such outrageous behavior, an amount that is, on information and belief, in excess of \$10,000.00.

WHEREFORE, Plaintiff prays:

1. That the Court award Plaintiff all compensatory damages alleged, including special and general damages as alleged herein, for both the survival claims and wrongful death claims alleged, in an amount exceeding \$10,000.00.
2. That the Court award Plaintiff punitive damages in an amount exceeding \$10,000.00;
3. That the Court award Plaintiff interest as allowed by law;
4. That the Court award Plaintiff the costs of this action;
5. That the Court award Plaintiff reasonable attorney fees as allowed by law;
6. That all issues so triable be tried by a jury; and
7. For such other and further legal or equitable relief that this Court deems just and proper under the circumstances.

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This the 10th day of February, 20 09.

THE LAW OFFICES OF
THOMAS WAITT PLEASANT, PLLC

By: 
Thomas W. Pleasant
NC Bar No. 23474
P.O. Box 53988
Fayetteville, NC 28305
(910) 323-3250 (Tel)
(910) 323-3255 (Fax)
twp@pleasantlaw.com
Attorney for Plaintiff

MCHUGH FULLER LAW GROUP
James B. McHugh
Michael J. Fuller, Jr.
97 Elias Whiddon Rd.
Hattiesburg, MS 39402
(601) 261-2220 (Tel)
(601) 261-2481 (Fax)
Attorneys for Plaintiff
(Motions for Admission Pro Hac Vice
Anticipated/Pending)