

2010 WL 11053265 (Ark.Cir.) (Trial Pleading)
Circuit Court of Arkansas.
Pulaski County

Etta S. STRANGE, et al.,
v.
GGNSC NORTH LITTLE ROCK, LLC, et al.

No. CV2010006225.
November 2, 2010.

Complaint

[Melody H. Piazza](#) (Ar 86108), [Deborah T. Riordan](#) (AR 93231), Wilkes & McHugh, P.A., One Information Way, Suite 300, Little Rock, Arkansas 72202, Telephone: (501) 371-9903, Facsimile: (501) 371-9905, for plaintiff Etta S. Strange, as Special Personal Representative of the Estate of Etta M. Strange, Deceased, and on behalf of the wrongful death beneficiaries of Etta M. Strange.

Comes now Plaintiff, Etta S. Strange, as Special Personal Representative of the Estate of Etta M. Strange, deceased, and on behalf of the wrongful death beneficiaries of Etta M. Strange, and for her cause of action against Defendants, GGNSC North little Rock LLC d/b/a Golden LivingCenter - North Little Rock n/k/a Premier Health and Rehabilitation, LLC; GGNSC Administrative Services LLC d/b/a Golden Ventures; GGNSC Holdings LLC d/b/a Golden Horizons; Golden Gate National Senior Care LLC d/b/a Golden Living; GGNSC Equity Holdings, LLC; Golden Gate Ancillary LLC d/b/a Golden Innovations; GPH North Little Rock LLC; and GGNSC Clinical Services LLC d/b/a Golden Clinical Services, states:

JURISDICTIONAL STATEMENT

1. Etta S. Strange is the Special Personal Representative of the Estate of Etta M. Strange, deceased, and on behalf of the wrongful death beneficiaries of Etta M. Strange, pursuant to Order of Pulaski County Circuit Court, Probate Division, Case No. PR-2010-1125, attached hereto as Exhibit A, and therefore, brings this action on behalf of the Estate of Etta M. Strange, deceased, and on behalf of the wrongful death beneficiaries of Etta M. Strange, pursuant to the Arkansas Survival of Actions Statute ([Ark. Code Ann. § 16-62-101](#)) and the Arkansas Wrongful Death Act ([Ark. Code Ann. § 16-62-102](#)). Etta S. Strange brings this action against Defendants claiming damages on behalf of Etta M. Strange arising out of her care and treatment by Defendants that occurred at Golden LivingCenter - North Little Rock.

2. Etta S. Strange is a daughter of Etta M. Strange and a resident of North Little Rock, Pulaski County, Arkansas.

3. Upon information and belief, Etta M. Strange was admitted as a resident of Golden LivingCenter - North Little Rock n/k/a Premier Health and Rehabilitation, LLC located at 3600 Richards Road, North Little Rock, Pulaski County, Arkansas 72117, in 2008, and remained a resident until early June of 2008. Etta M. Strange died on June 18, 2008.

4. Defendant GGNSC North Little Rock LLC, operating under the fictitious name of Golden LivingCenter - North Little Rock, is a foreign limited liability company with its principal office located at 3600 Richards Road, North Little Rock, Arkansas 72117. GGNSC North Little Rock LLC d/b/a Golden LivingCenter - North Little Rock is authorized to do business in the State of Arkansas and is engaged in the for-profit custodial care of **elderly** individuals who are chronically inform, mentally impaired and/or in need of nursing care and treatment. Upon information and belief, at all times material to this action, Defendant GGNSC North Little Rock LLC was the "licensee" of Golden LivingCenter - North Little Rock n/k/a Premier Health and Rehabilitation,

LLC in North Little Rock, Pulaski County, Arkansas. The causes of action made the basis of this suit arise out of such business conducted by said Defendant in the ownership, operation, management, licensing and/or control of Golden LivingCenter - North Little Rock in North Little Rock, Arkansas, during the residency of Etta M. Strange. The registered agent for service of process of Defendant GGNSC North Little Rock LLC d/b/a Golden LivingCenter - North Little Rock is Corporation Service Company, 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

5. Defendant GGNSC Administrative Services LLC d/b/a Golden Ventures, a foreign limited liability company with its principal office located at 1000 Beverly Way n/k/a Fianna Way, Fort Smith, Arkansas 72919, is authorized to do business in the State of Arkansas and is engaged in the business of for-profit custodial care of **elderly** and infirm nursing home residents in nursing facilities in several states across the United States. Upon information and belief, at all times material to this action, Defendant GGNSC Administrative Services LLC d/b/a Golden Ventures owned, operated, managed, controlled and/or provided services for nursing facilities, including Golden LivingCenter - North Little Rock during the residency of Etta M. Strange. The registered agent for service of process of Defendant GGNSC Administrative Services LLC d/b/a Golden Ventures is Corporation Service Company, 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

6. Defendant GGNSC Holdings LLC d/b/a Golden Horizons, a foreign limited liability company with its principal office located at 1000 Beverly Way n/k/a Fianna Way, Fort Smith, Arkansas 72919, is authorized to do business in the State of Arkansas and is engaged in the business of for-profit custodial care of **elderly** and infirm nursing home residents in nursing facilities in several states across the United States. Upon information and belief, at all times material to this action, Defendant GGNSC Holdings LLC d/b/a Golden Horizons owned, operated, managed, controlled and/or provided services for nursing facilities, including Golden LivingCenter - North Little Rock during the residency of Etta M. Strange. The registered agent for service of process of Defendant GGNSC Holdings LLC d/b/a Golden Horizons is Corporation Service Company, 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

7. Defendant Golden Gate National Senior Care LLC d/b/a Golden Living, a foreign limited liability company with its principal office located at 1000 Beverly Way n/k/a Fianna Way, Fort Smith, Arkansas 72919, is authorized to do business in the State of Arkansas and is engaged in the business of for-profit custodial care of **elderly** and infirm nursing home residents in nursing facilities in several states across the United States. Upon information and belief, at all times material to this action, Defendant Golden Gate National Senior Care LLC d/b/a Golden Living owned, operated, managed, controlled and/or provided services for nursing facilities, including Golden LivingCenter - North Little Rock during the residency of Etta M. Strange. The registered agent for service of process of Defendant Golden Gate National Senior Care LLC d/b/a Golden Living is Corporation Service Company, 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

8. Defendant GGNSC Equity Holdings LLC, a foreign limited liability company with its principal office located at 1000 Fianna Way, Fort Smith, Arkansas 72919, is authorized to do business in the State of Arkansas and is engaged in the business of for-profit custodial care of **elderly** and infirm nursing home residents in nursing facilities in several states across the United States. Upon information and belief, at all times material to this action, Defendant GGNSC Equity Holdings LLC owned, operated, managed, controlled and/or provided services for nursing facilities, including Golden LivingCenter - North Little Rock during the residency of Etta M. Strange. The registered agent for service of process of Defendant GGNSC Equity Holdings LLC is Corporation Service Company, 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

9. Defendant Golden Gate Ancillary LLC d/b/a Golden Innovations, a foreign limited liability company with its principal place of business at 1000 Beverly Way n/k/a Fianna Way, Fort Smith, Arkansas 72919, is authorized to do business in the State of Arkansas and is engaged in the business of for-profit custodial care of **elderly** and infirm nursing home residents in nursing facilities in several states across the United States. Upon information and belief, at all times material to this action, Defendant Golden Gate Ancillary LLC d/b/a Golden Innovations provided business services, including, but not limited to, rehabilitation, home health, hospice, staffing, procurement and construction services for nursing facilities, including Golden LivingCenter - North Little Rock during the residency of Etta M. Strange. The registered agent for service of process of Defendant Golden

Gate Ancillary, LLC d/b/a Golden Innovations is Corporation Service Company, 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

10. Defendant GPH North Little Rock LLC, a foreign limited liability company with its principal office located at 3600 Richards Road, North Little Rock, Arkansas 72117, is authorized to do business in the State of Arkansas. Upon information and belief, at all times material to this action, Defendant GPH North Little Rock LLC owned, operated, managed, controlled and/or provided services for Golden LivingCenter - North Little Rock during the residency of Etta M. Strange. The registered agent for service of process of Defendant GPH North Little Rock LLC is Corporation Service Company, 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

11. Defendant GGNSC Clinical Services LLC d/b/a Golden Clinical Services, a foreign limited liability company with its principal office located at 1000 Fianna Way, Fort Smith, Arkansas 72919, is authorized to do business in the State of Arkansas and is engaged in the business of for-profit clinical services for **elderly** and infirm nursing home residents in nursing facilities in several states across the United States. Upon information and belief, at all times material to this action, Defendant GGNSC Clinical Services LLC d/b/a Golden Clinical Services provided services for nursing facilities, including Golden LivingCenter - North Little Rock during the residency of Etta M. Strange. The registered agent for service of process of Defendant GGNSC Clinical Services LLC d/b/a Golden Clinical Services is Corporation Service Company, 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

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

13. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS

14. Upon information and belief, Etta M. Strange was admitted as a resident of Golden LivingCenter - North Little Rock n/k/a Premier Health and Rehabilitation, LLC located at 3600 Richards Road, North Little Rock, Pulaski County, Arkansas 72117, in 2008 for rehabilitation. Etta M. Strange remained a resident until early June of 2008 when she fell from her bed causing injuries to her legs, and she was transferred to St. Vincent's Infirmary. Etta M. Strange was transferred from St. Vincent's Infirmary to Arkansas Hospice in Doctor's Hospital, where she died on June 18, 2008.

15. Defendants were aware of the medical condition of Etta M. Strange and the care she required when they represented that they could adequately care for her needs.

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

17. Defendants are liable for all damages alleged in this matter in their capacity as the owners, operators, licensee and/or managers of the facility during the residency of Etta M. Strange.

18. In an effort to ensure that Etta M. Strange and other residents whose care was partially funded by the government were placed at Golden LivingCenter - North Little Rock, Defendants held themselves out to the Arkansas Department of Human Services (DHS) and the public at large as being:

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

19. In surveys and inspections conducted in 2008 prior to and during the residency of Etta M. Strange, the Arkansas Office of Long Term Care repeatedly cited Golden LivingCenter - North Little Rock for regulatory deficiencies related to the care and treatment of the facility's residents. The facility was cited with the following deficiencies, among others, determining that the facility failed to:

- a) Give each resident care and services to get or keep the highest quality of life possible;
- b) Give professional services that follow each resident's written care plan;
- c) Give proper treatment to residents with feeding tubes to prevent problems (such as aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, nasal-pharyngeal ulcers) and help restore eating skills, if possible;
- d) Make sure that each resident who enters the nursing home without a catheter is not given a catheter, unless it is necessary;
- e) Make sure that residents who cannot care for themselves receive help with eating/drinking, grooming and hygiene;
- f) Properly care for residents needing special services, including: injections, colostomy, ureostomy, ileostomy, tracheostomy care, tracheal suctioning, respiratory care, foot care, and prostheses;
- g) Keep each resident free from physical restraints, unless needed for medical treatment;
- h) Immediately tell the resident, doctor, and a family member if: the resident is injured, there is a major change in resident's physical/mental health, there is a need to alter treatment significantly, or the resident must be transferred or discharged;
- i) 1) provide 3 meals daily at regular times; or 2) serve breakfast within 14 hours after dinner; or 3) offer a snack at bedtime each day;
- j) Make sure that residents are well nourished;
- k) Store, prepare, distribute and serve food under sanitary conditions;
- l) Have drugs and other similar products available, which are needed every day and in emergencies, and give them out properly;
- m) Make sure that residents are safe from serious medication errors;
- n) Make sure that staff members wash their hands when needed;

- o) Make sure that the nursing home area is free of dangers that cause accidents
- p) Provide needed housekeeping and maintenance; and
- q) Give or get lab tests to meet the needs of residents.

20. In 2008, immediately after the residency of Etta M. Strange, Golden LivingCenter - North Little Rock was cited with the following deficiencies by the Arkansas Office of Long Term Care. The violations included, but were not limited to, the following deficiencies, determining that the facility failed to:

- a) Give each resident care and services to get or keep the highest quality of life possible;
- b) Give professional services that follow each resident's written care plan;
- c) Conduct criminal record checks on all persons which the facility intends to make an offer of employment;
- d) Conduct criminal record checks on applicable employees within the five (5) year limit on an ongoing basis;
- e) Conduct an employment clearance registry check on one (1) out of five (5) employees before or on the employee's hire date;
- d) Conduct required tuberculosis skin tests annually and on new employees;
- e) Conduct an annual in-service on the topic of Dentist Advisory;
- f) Meet minimum direct-care staff ratios;
- g) Get rid of garbage properly.

21. The extent to which the above citations directly included failures or deficiencies in the care, services and treatment provided to Etta M. Strange remains to be discovered. However, all of the above cited deficiencies establish that Defendants were on notice and aware of problems with resident care, including failures and deficiencies in care which caused the injuries alleged herein.

22. Defendants failed to discharge their obligations of care to Etta M. Strange with a conscious disregard for her rights and safety. At all times mentioned herein, Defendants, through their corporate officers and administrators, had knowledge of, ratified and/or otherwise authorized all of the acts and omissions that caused the injuries suffered by Etta M. Strange, as more fully set forth below. Defendants knew that this facility could not provide the minimum standard of care to the weak and vulnerable residents of Golden LivingCenter - North Little Rock. The severity of the recurrent negligence inflicted upon Etta M. Strange while under the care of the facility accelerated the deterioration of her health and physical condition and resulted in the physical and emotional injuries described below:

- a) Falls with injuries, including wounds on legs, and bruising on arms;
- b) Skin issues, including breakdown, lacerations and bruising;
- c) Dehydration;
- d) Weight loss;

- e) Infections, including wound infections;
- f) Pressure sores, including sore on buttocks;
- h) Medication errors;
- i) Poor hygiene;
- j) Pain; and
- k) Death.

The above-identified injuries, as well as the conduct specified below, caused Etta M. Strange to suffer extreme pain and suffering, hospitalization, mental anguish, degradation, disability, disfigurement, emotional distress, loss of personal dignity, and eventually caused her death.

23. Defendants controlled the operation, planning, management and quality control of the facility. The authority exercised over the nursing facility included, but was not limited to, budgeting, marketing, human resources management, training, staffing, creation and implementation of all policy and procedure manuals used by the facility, federal and state reimbursement, quality care assessment and compliance, licensure and certification, legal services, and financial, tax and accounting control through fiscal policies established by Defendants.

24. Defendants operated and managed the facility so as to maximize profits by reducing staffing levels below that needed to provide adequate care to residents that would comply with federal and state regulations governing skilled nursing facilities. Thus, Defendants intentionally and/or with reckless disregard for the consequences of their actions caused staffing levels at their facility to be set so that the personnel on duty at any given time could not reasonably tend to the needs of their assigned residents. Upon information and belief, Defendants knowingly established staffing levels that created recklessly high nurse/resident ratios and disregarded patient acuity levels as well as the minimal time required to perform essential functions. All of these acts of malfeasance directly caused injury to Etta M. Strange and other residents of the facility and were known to Defendants.

25. The acts and omissions of Defendants were motivated by a desire to increase profitability by reducing expenditures for needed staff, training, supervision and care to levels that would predictably lead to severe injury.

26. Plaintiff alleges that during her residency at the facility, Etta M. Strange was under the care, supervision and treatment of Defendants and that the injuries complained of were proximately caused by the acts and omissions of Defendants.

27. Defendants are vicarious liability for the acts and omissions of all persons or entities under their control, either directly or indirectly, including employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, or agencies causing or contributing to the injuries of Etta M. Strange.

COUNT ONE NEGLIGENCE

28. Plaintiff incorporates all of the allegations contained in Paragraphs 1-27 as if fully set forth herein.

29. Defendants owed a non-delegable duty to their residents, including Etta M. Strange, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

30. Defendants owed a non-delegable duty to their residents, including Etta M. Strange, to exercise reasonable care in providing care and services in a safe and beneficial manner.

31. Defendants owed a non-delegable duty to their residents, including Etta M. Strange, to hire, train and supervise employees to deliver care and services to residents in a safe and beneficial manner.

32. Defendants breached these duties by failing to exercise reasonable care and by failing to prevent the mistreatment, abuse and **neglect** of Etta M. Strange. The negligence of Defendants includes, but is not limited to, the following acts and omissions:

- a) Failure to provide sufficient nursing and other staff that was properly qualified and trained;
- b) Failure to adequately, timely and appropriately educate and inform the caregivers at the facility of the needs, level of assistance, and prescribed care and treatment for Etta M. Strange;
- c) Failure to have in place adequate guidelines, policies and procedures of the facility and to administer those policies through enforcement of any rules, regulations, by-laws or guidelines;
- d) Failure to take reasonable steps to prevent, eliminate and correct deficiencies and problems in resident care at the facility;
- e) Failure to ensure that Etta M. Strange attained and maintained her highest level of physical, mental, and psychosocial well-being;
- f) Failure to establish, publish and/or adhere to policies for nursing personnel concerning the care and treatment of residents with nursing, medical and psychosocial needs similar to those of Etta M. Strange;
- g) Failure to ensure that Etta M. Strange received adequate and proper nutrition, fluids, supervision, and skin care;
- h) Failure to take necessary and reasonable custodial and hygiene measures to prevent the onset and progression of skin breakdown and pressure sores during the residency;
- i) Failure to provide and maintain an adequate and appropriate fluid maintenance program for Etta M. Strange to prevent dehydration;
- j) Failure to provide care, treatment and medication in accordance with physician's orders;
- k) Failure to provide proper supervision, treatment and assessment in order to prevent falls with injuries;
- l) Failure to provide Etta M. Strange with adequate sanitary care;
- m) Failure to provide adequate hygiene and sanitary care to prevent infections;
- n) Failure to adequately and appropriately monitor Etta M. Strange and recognize significant changes in her health status, and to timely notify her family of significant changes in her health status;
- o) Failure to monitor or increase the number of nursing personnel at Golden LivingCenter - North Little Rock to ensure that Etta M. Strange received necessary supervision, timely and accurate care assessments, received proper treatment and diet, received timely custodial intervention due to a significant change in condition, and was protected from accidental injuries by the correct use of ordered and reasonable safety measures;

p) Failure to provide adequate supervision to the nursing staff to ensure that Etta M. Strange received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments to prevent infection, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Etta M. Strange;

q) Failure to adequately screen, evaluate, and check references, test for competence and use ordinary care in selecting nursing personnel to work at Golden LivingCenter - North Little Rock;

r) Failure to terminate employees at Golden LivingCenter - North Little Rock assigned to Etta M. Strange who were known to be careless, incompetent and unwilling to comply with the policies and procedures of Golden LivingCenter - North Little Rock and the rules and regulations promulgated by the Arkansas Department of Human Services and the Office of Long Term Care;

s) Failure to assign nursing personnel at Golden LivingCenter - North Little Rock duties consistent with their education and experience based on:

1) Etta M. Strange's medical history and condition, nursing and rehabilitative needs;

2) The characteristics of the resident population residing in the area of the facility where Etta M. Strange was a resident; and

3) The nursing skills needed to provide care to such resident population;

t) Failure by the members of the governing body of Golden LivingCenter - North Little Rock to discharge their legal and lawful obligation to ensure that the rules and regulations designed to protect the health and safety of residents, such as Etta M. Strange, as promulgated by the Arkansas Department of Human Services and the Arkansas Office of Long Term Care, were consistently complied with on an ongoing basis; and to ensure appropriate corrective measures were implemented to correct problems concerning inadequate resident care;

u) Failure by members of the governing body of Golden LivingCenter - North Little Rock to discharge their legal and lawful obligation to ensure compliance with the facility's resident care policies;

v) Failure to adopt adequate guidelines, policies, and procedures of Golden LivingCenter - North Little Rock for documenting, maintaining files, investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at Golden LivingCenter - North Little Rock, regardless of whether such complaint derived from a resident of the facility, an employee of the facility or any interested person;

w) Failure to document and maintain medical records on Etta M. Strange in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible and systematically organized with respect to diagnosis, treatment and assessment and establishment of appropriate care plans of care and treatment;

x) Failure to properly in-service and orient employees to pertinent patient care needs to maintain the safety of residents;

y) Failure to ensure that services provided or arranged by the facility were provided by qualified persons in accordance with Etta M. Strange's written plan of care and failure to ensure that the physician's plan of care was implemented; and

z) Failure to provide a safe environment.

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 Etta M. Strange.

34. Defendants further breached their duties of care to Etta M. Strange by violating certain laws and regulations in force in the State of Arkansas at the time of the occurrences discussed herein including, but not limited to, the following:

- a) By failing to comply with rules and regulations promulgated by the Arkansas Department of Human Services, Division of Social Services, Office of Long Term Care, pursuant to authority expressly conferred by Act 28 of 1979 ([Ark. Code Ann. § 20-10-202, et seq.](#)) and published in the Long Term Care (LTC) Provider Manual on April 8, 1984, and the supplements thereto, and federal minimum standards imposed by the United States Department of Health and Human Services;
- b) By failing to provide the necessary care and services to attain or maintain the highest practicable, physical, mental and psychosocial well-being of Etta M. Strange, in accordance with the comprehensive assessment and plan of care;
- c) By failing to ensure a nursing care plan based on Etta M. Strange's problems and needs was established that contained measurable objectives and timetables to meet her medical, nursing, and mental and psychosocial needs as identified in his comprehensive assessment;
- d) By failing to review and revise Etta M. Strange's nursing care plan when her needs changed;
- e) By failing to treat Etta M. Strange courteously, fairly and with the fullest measure of dignity;
- f) By failing to provide sufficient nursing staff and nursing personnel to ensure that Etta M. Strange attained and maintained her highest practicable physical, mental and psychosocial well-being;
- g) By failing to notify the family and physician of Etta M. Strange of a need to alter her treatment significantly.
- h) By failing to provide a safe environment; and
- i) By failing to administer the facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

35. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed above. Each of the foregoing acts of negligence on the part of Defendants was a proximate cause of Etta M. Strange's injuries as more specifically described herein, which were all foreseeable, and caused her untimely death. Etta M. Strange suffered personal injuries, including extreme pain and suffering, hospitalization, mental anguish, degradation, disability, disfigurement, emotional distress, and loss of personal dignity, which caused her family to suffer more than normal grief upon her death. Plaintiff prays for compensatory damages against Defendants for the wrongful death of Etta M. Strange, including the grief suffered as well as the expenses of funeral and other related expenses.

36. As a direct and proximate result of such grossly negligent, willful, wanton, reckless, malicious and/or intentional conduct, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Defendants including, but not limited to, medical expenses, hospitalization, extreme pain and suffering, mental anguish, degradation, disability, disfigurement, emotional distress, loss of personal dignity, loss of life and related expenses, in an amount exceeding that required by this Court and by federal court jurisdiction in diversity of citizenship cases, to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT TWO LIABILITY OF THE LICENSEE OF GOLDEN LIVINGCENTER
- NORTH LITTLE ROCK FOR DEFENDANTS' VIOLATIONS OF THE LONG-
TERM CARE FACILITY RESIDENTS ACT, [ARK. CODE ANN. §§ 20-10-1201 et seq.](#)**

37. Plaintiff incorporates all of the allegations contained in Paragraphs 1-36 as if fully set forth herein.

38. Among the Defendants, the licensee of Golden LivingCenterore had a statutorily-mandated duty to provide Etta M. Strange her basic, nursing home resident's rights as set forth in the Protection of Long-Term Care Facility Residents Act, [Ark. Code Ann. §§ 20-10-1201 et seq.](#)

39. The Protection of Long-Term Care Facility Residents Act mandates the development, establishment, and enforcement of basic standards for the health, care, and treatment of persons in long-term care facilities; and mandates that the maintenance and operation of long-term care facilities will ensure safe, adequate, and appropriate care, treatment, and health of residents, like Etta M. Strange.

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

41. The statutory duty imposed upon the facility licensee to prevent deprivation or infringement of the resident's rights of Etta M. Strange was non-delegable. Thus, among the Defendants, the licensee is directly liable to Plaintiff for any deprivation and infringement of Etta M. Strange's resident's rights occurring as a result of its own action or inaction, and as a result of the action or inaction of any other person or entity, including employees, agents, consultants, independent contractors and affiliated entities, whether in-house or outside entities, individuals, agencies or pools, as well as any deprivation and infringement of Etta M. Strange's resident's rights caused by Defendants' policies, procedures, whether written or unwritten, and common practices.

42. Any person or entity acting as an employee or agent of Golden LivingCenter - North Little Rock assumed and undertook to perform the licensee's non-delegable and statutorily-mandated duty to provide Etta M. Strange her nursing home resident's rights as set forth in [Ark. Code Ann. §§20-10-1201](#) 20 seq. in the operation and management of Golden LivingCenter - North Little Rock.

43. Notwithstanding the responsibility of the licensee to protect and provide for these statutorily-mandated, nursing home resident's rights, Defendants infringed upon, and Etta M. Strange was deprived of, rights mandated by [Ark. Code Ann. §§ 20-10-1201 et seq.](#) including, but not limited to, the following:

a) The right to receive adequate and appropriate health care and protective and support services, including social services, mental health services, if available, planned recreational activities, and therapeutic and rehabilitative services consistent with the resident care plan for Etta M. Strange, with established and recognized practice standards within the community, and with rules as adopted by federal and state agencies, such rights include:

1) The right to receive adequate and appropriate custodial service, defined as care for Etta M. Strange which entailed observation of diet and sleeping habits and maintenance of a watchfulness over her general health, safety, and well-being; and

2) The right to receive adequate and appropriate residential care plans, defined as a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and Etta M. Strange or her designee or legal representative, which included a comprehensive assessment of the needs of Etta M. Strange, a listing of services provided within or outside the facility to meet those needs, and an explanation of service goals;

b) The right to regular, consultative, and emergency services of physicians;

c) The right to appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff;

d) The right to access to dental and other health-related services, recreational services, rehabilitative services, and social work services appropriate to the needs and conditions of Etta M. Strange, and not directly furnished by the licensee;

- e) The right to a wholesome and nourishing diet sufficient to meet generally accepted standards of proper nutrition, guided by standards recommended by nationally recognized professional groups and associations with knowledge of dietetics, and such therapeutic diets as may be prescribed by attending physicians;
- f) The right to a facility with its premises and equipment, and conduct of its operations maintained in a safe and sanitary manner;
- g) The right to be free from mental and physical abuse, and from physical and chemical restraints;
- h) The right of Etta M. Strange to have privacy of her body in treatment and in caring for her personal needs;
- i) The right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to resident care and the behavior of other residents;
- j) The right to participate in social, religious, and community activities;
- k) The right to the obligation of the facility to keep full records of the admissions and discharges of Etta M. Strange, and her medical and general health status, including:
 - 1) medical records;
 - 2) personal and social history;
 - 3) individual resident care plans, including, but not limited to, prescribed services, service frequency and duration, and service goals; and
 - 4) making it a criminal offense to fraudulently alter, deface, or falsify any medical or other long-term care facility record, or cause or procure any of these offenses to be committed; and
- l) The right to be treated courteously, fairly, and with the fullest measure of dignity.

44. The aforementioned infringement and deprivation of the rights of Etta M. Strange were the result of Defendants failing to do that which a reasonably careful person would do under similar circumstances.

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

46. The infringement or deprivation of the resident's rights of Etta M. Strange by Defendants was willful, wanton, gross, flagrant, reckless, or consciously indifferent. Pursuant to [Ark. Code Ann. § 20-10-1209\(c\)](#), Plaintiff is entitled to recover punitive damages against the licensee of the facility.

DAMAGES

47. As a direct and proximate result of the negligence of Defendants as set out above, Etta M. Strange suffered injuries including, but not limited to, those listed herein. As a result, Etta M. Strange incurred significant medical expenses, suffered extreme

pain and suffering, hospitalization, unnecessary loss of personal dignity, emotional distress, degradation, mental anguish, disfigurement, disability, loss of life and related expenses.

48. Plaintiff seeks punitive and compensatory damages against Defendants in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled.

DEMAND FOR JURY TRIAL

49. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Etta S. Strange, as Special Personal Representative of the Estate of Etta M. Strange, deceased, and on behalf of the wrongful death beneficiaries of Etta M. Strange, prays for judgment against Defendants as follows:

1. For damages in an amount adequate to compensate Plaintiff for the injuries and damages sustained.
2. For all general and special damages caused by the alleged conduct of Defendants.
3. For costs of litigating this case, including attorney's fees.
4. For punitive damages sufficient to punish Defendants for their egregious and malicious misconduct in reckless disregard and conscious indifference to the consequences to Etta M. Strange and her statutory beneficiaries, and to deter Defendants and others from repeating such atrocities.
- 5 For all other relief to which Plaintiff is entitled.

Respectfully submitted,

Etta S. Strange, as Special Personal Representative of the Estate of Etta M. Strange, deceased, and on behalf of the wrongful death beneficiaries of Etta M. Strange

By:

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