

2013 WL 10005745 (Ark.Cir.) (Trial Pleading)
Circuit Court of Arkansas.
Pulaski County

Shirley HENRY,
v.
REGIONAL CARE OF JACKSONVILLE, LLC, et al.

No. CV2013003149.
August 12, 2013.

Complaint

Shirley Henry, as Special Administrator of the Estate of Lucille Betncourt, Deceased, [Brian D. Reddick](#) (AR 94057), [Robert W. Francis](#) (AR 2007032), [Matthew D. Swindle](#) (AR 2012168), Reddick Moss, PLLC, One Information Way, Suite 201, Little Rock, Arkansas 72202, matthew@reddickmoss.com, brian@reddickmoss.com, rob@reddickmoss.com, Telephone: (501) 907-7790, Facsimile: (501) 907-7793, for plaintiff.

COMES NOW, the Plaintiff, Shirley Henry, as Special Administrator of The Estate of Lucille Betncourt, deceased, by and through her attorneys, Reddick Moss, PLLC and Rainwater, Holt & Sexton, and for her causes of action against Defendants, states as follows:

Jurisdictional Statement

1. Shirley Henry is the Special Administrator of the Estate of Lucille Betncourt, deceased pursuant to an August 6, 2013 Order Appointing Special Administrator, a copy of which is attached hereto as **Exhibit A**. Shirley Henry brings this action on behalf of Lucille Betncourt.
2. Shirley Henry is the daughter of Lucille Betncourt.
3. Lucille Betncourt was a resident of Woodland Hills Healthcare and Rehabilitation of Jacksonville, (sometimes referred to as "facility"), a nursing home located at 1320 West Braden Street, Jacksonville, Pulaski County, Arkansas, from approximately 2008, until December 15, 2012.
4. Defendant Regional Care of Jacksonville, LLC d/b/a Woodland Hills Healthcare and Rehabilitation of Jacksonville is an Arkansas limited liability company authorized to do business and doing business in the State of Arkansas by operating, managing, owning, and providing services and holding the license for Woodland Hills Healthcare and Rehabilitation of Jacksonville. The agent for service of process for Regional Care of Jacksonville, LLC is David J. McDonough, 222 S. First Street, Rogers, Arkansas 72756.
5. Defendant Woodland Hills Healthcare and Rehabilitation of Jacksonville, LLC is an Arkansas limited liability company authorized to do business and doing business in the State of Arkansas by operating, managing, owning and/or providing services for Woodland Hills Healthcare and Rehabilitation of Jacksonville. The agent for service of process for Woodland Hills Healthcare and Rehabilitation of Jacksonville, LLC is David J. McDonough, 222 S. First Street, Rogers, Arkansas 72756.
6. Defendant Cornerstone Health Care, Inc. is a foreign corporation authorized to do business and doing business in the State of Arkansas by operating, managing, owning and/or providing services for Woodland Hills Healthcare and Rehabilitation of

Jacksonville of Jacksonville. The agent for service of process for Cornerstone Health Care, Inc. is David McDonough, 5302 Village Parkway Suite One, Rogers, Arkansas 72758.

7. Defendant Christian Health Care Hospice, Inc. is a foreign corporation with its principal place of business located at 222 South First Street, Rogers, Arkansas 72756, and was doing business in the State of Arkansas by operating, managing, owning, and/or providing services for Woodland Hills Healthcare and Rehabilitation of Jacksonville of Jacksonville. The agent for service of process for Christian Health Care Hospice, Inc. is Pete Stayton, 1328 East Evergreen, Springfield, Missouri 65803.

8. Upon information and belief, Defendant Angela Herd was the Administrator of Woodland Hills Healthcare and Rehabilitation of Jacksonville during the residency of Lucille Betncourt. The causes of action made the basis of this suit arise out of Ms. Herd's administration of Woodland Hills Healthcare and Rehabilitation of Jacksonville during the residency of Ms. Betncourt. Defendant Angela Herd may be served with process at place of employment: 1320 West Braden Street, Jacksonville, Arkansas 72076.

9. Whenever the term "Nursing Home Defendants" is utilized herein, such term collectively refers to Regional Care of Jacksonville, LLC d/b/a Woodland Hills Healthcare and Rehabilitation of Jacksonville; Woodland Hills Healthcare and Rehabilitation of Jacksonville, LLC; Cornerstone Health Care, Inc.; and Christian Health Care Hospice, Inc.

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

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

12. Jurisdiction and venue are proper in this Court.

Factual Allegations

13. Other than hospitalizations, Lucille Betncourt was a resident of Woodland Hills Healthcare and Rehabilitation of Jacksonville from approximately 2008 until December 15, 2012.

14. Defendants were aware of Ms. Betncourt's medical condition and the care she required when they represented that they could adequately care for her needs.

15. In an effort to ensure that Lucille Betncourt and other residents whose care was partially funded by the government were placed at Woodland Hills Healthcare and Rehabilitation of Jacksonville, 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 Lucille Betncourt 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.

16. The Defendants were on notice and aware of problems with resident care, including those failures and deficiencies that caused injury to Lucille Betncourt, at Woodland Hills Healthcare and Rehabilitation of Jacksonville but did nothing to correct those problems.

17. 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, 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. Upon information and belief, Angela Herd was a member of the governing body of Woodland Hills Healthcare and Rehabilitation of Jacksonville and was legally responsible for establishing and implementing policies regarding management and operation of the facility and for retaining the services of a qualified administrator, in whom the ultimate authority and legal responsibility was vested for patient care in the nursing home.

18. Defendants failed to discharge their obligations of care to Lucille Betncourt 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 Ms. Betncourt, as more fully set forth below. Defendants knew that their facility could not provide the minimum standard of care to the weak and vulnerable residents of Woodland Hills Healthcare and Rehabilitation of Jacksonville. The severity of the recurrent negligence inflicted upon Ms. Betncourt while a resident of the facility accelerated the deterioration of her health and physical condition and resulted in physical and emotional injuries. While a resident at Woodland Hills Healthcare and Rehabilitation of Jacksonville, Lucille Betncourt sustained multiple injuries including, but not limited to, the following:

- a) Malnutrition;
- b) Dehydration;
- c) Bed sores and associated pain and disfigurement;
- d) Multiple falls;
- e) UTIs;
- f) Poor hygiene; and
- g) Death.

19. The injuries sustained by Lucille Betncourt, as well as the conduct specified below, caused her to lose her personal dignity and to suffer extreme and unnecessary pain, anguish, and emotional trauma.

20. Defendants controlled the operation, planning, management and quality control of Woodland Hills Healthcare and Rehabilitation of Jacksonville. 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 Woodland Hills Healthcare and Rehabilitation of Jacksonville, 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.

21. Defendants operated and managed Woodland Hills Healthcare and Rehabilitation of Jacksonville 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 knowingly 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. These acts of malfeasance directly caused injury to Lucille Betncourt and other residents of Woodland Hills Healthcare and Rehabilitation of Jacksonville and were known to Defendants.

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

23. Plaintiff alleges that, during Lucille Betncourt residency at Woodland Hills Healthcare and Rehabilitation of Jacksonville, Ms. Betncourt was under the care, supervision and treatment of Defendants and that the injuries complained of were proximately caused by the acts and omissions of the Defendants.

24. Defendants were vicariously liable for the acts and omissions of all persons or entities under their control, either directly or indirectly, including employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, agencies or pools causing or contributing to the injuries of Lucille Betncourt.

CAUSES OF ACTION AGAINST THE NURSING HOME DEFENDANTS

Count One: Negligence

25. Plaintiff incorporates the allegations contained in Paragraphs 1 - 24 as if fully set forth herein.

26. The Nursing Home Defendants owed a non-delegable duty to residents, including Lucille Betncourt, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

27. The Nursing Home Defendants owed a non-delegable duty to their residents, including Lucille Betncourt, to exercise reasonable care in providing care and services in a safe and beneficial manner.

28. The Nursing Home Defendants owed a non-delegable duty to their residents, including Lucille Betncourt, to hire, train and supervise employees to deliver care and services to residents in a safe and beneficial manner.

29. The Nursing Home Defendants owed a non-delegable duty to residents, including Lucille Betncourt, to use reasonable care in treating their residents with the degree of skill and learning ordinarily possessed and used by nursing home facilities in the same or similar locality.

30. The Nursing Home Defendants owed a non-delegable duty to assist all residents, including Lucille Betncourt, in attaining and maintaining the highest level of physical, mental and psychosocial well-being.

31. The Nursing Home Defendants breached these duties by failing to exercise reasonable care and by failing to prevent the mistreatment, abuse and **neglect** of Lucille Betncourt. The negligence of Defendants includes, but is not limited to, the following acts and omissions:

- a) The failure to follow physician orders to ensure that residents were free of significant medication errors;
- b) The failure to ensure that Ms. Betncourt attained and maintained her highest level of physical, mental, and psychosocial well-being;
- c) The failure to establish, publish and/or adhere to policies for nursing personnel concerning the care and treatment of residents with nursing, medical and psychosocial needs similar to those of Ms. Betncourt;

- d) The failure to increase the number of nursing personnel to ensure that Lucille Betncourt received timely and accurate care assessments, and proper treatment, medication and diet;
- e) The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants and medication aides to meet the total needs of Ms. Betncourt throughout her residency;
- f) The failure to increase the number of nursing personnel at the facility to ensure that Lucille Betncourt:
 - 1) Received timely and accurate care assessments;
 - 2) Received proper treatment, medication, and diet; and
 - 3) Was protected from accidental injuries by the correct use of ordered and reasonable safety measures.
- g) The failure to adequately screen, evaluate, and check references, test for competence and use ordinary care in selecting nursing personnel to work at the facility;
- h) The creation of and/or the failure or refusal to identify and correct the injuries, conditions, and circumstances described in paragraph 29 and exhibited by Ms. Betncourt;
- i) The failure to terminate employees at the facility assigned to Ms. Betncourt who were known to be careless, incompetent and unwilling to comply with the policies and procedures of the facility and the rules and regulations promulgated by the Arkansas Department of Human Services and the Office of Long Term Care;
- j) The failure to assign nursing personnel at the facility duties consistent with their education and experience based on:
 - 1) Lucille Betncourt's medical history and condition, nursing and rehabilitative needs;
 - 2) The characteristics of the resident population residing in the area of the facility where Lucille Betncourt was a resident; and,
 - 3) The nursing skills needed to provide care to such resident population.
- k) The failure by the members of the governing body of the facility to discharge their legal and lawful obligation by (1) ensuring that the rules and regulations designed to protect the health and safety of residents, such as Lucille Betncourt, 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 (2) ensuring appropriate corrective measures were implemented to correct problems concerning inadequate resident care;
 - 1) The failure to adopt adequate guidelines, policies, and procedures of the facility for documenting, maintaining files, investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at the facility, regardless of whether such complaint derived from a resident of the facility, an employee of the facility or any interested person;
- m) The failure to maintain medical records on Lucille Betncourt in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible and systematically organized with respect to diagnosis, treatment and assessment and establishment of appropriate care plans of care and treatment; and
- n) The failure to properly in-service and orient employees to pertinent patient care needs to maintain the safety of residents.

32. 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 Lucille Betncourt.

33. The Nursing Home Defendants further breached their duty of care to Lucille Betncourt 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 Lucille Betncourt in accordance with the comprehensive assessment and plan of care;

c) By failing to ensure a nursing care plan based on Lucille Betncourt'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 her comprehensive assessment;

d) By failing to review and revise Lucille Betncourt's nursing care plan when her needs changed;

e) By failing to treat Lucille Betncourt courteously, fairly and with the fullest measure of dignity;

f) By failing to provide sufficient nursing staff and nursing personnel to ensure that Lucille Betncourt attained and maintained her highest practicable physical, mental and psychosocial well-being;

g) By failing to provide a safe environment;

h) By failing to administer the facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident; and

i) By criminally abusing and **neglecting** Lucille Betncourt and by failing to report that abuse in violation of the Adult and Long-Term Care Facility Resident Maltreatment Act, [Ark. Code Ann. §§ 12-12-1701 et seq.](#)

34. 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 the Nursing Home Defendants was a proximate cause of Lucille Betncourt's injuries as more specifically described herein. Ms. Betncourt suffered personal injury including extreme pain and suffering, mental anguish, disfigurement, disability, degradation, loss of personal dignity, and emotional distress.

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

Count Two: Medical Malpractice

36. Plaintiff incorporates the allegations contained in Paragraphs 1 - 35 as if fully set forth herein.

37. The Nursing Home Defendants are either medical care providers as defined by Ark. Code Ann. § 16-114-201(2) and/or liable for medical care providers as defined by Ark. Code Ann. § 16-114-201(2).

38. The Nursing Home Defendants owed a non-delegable duty to residents, including Lucille Betncourt, to use reasonable care in treating their residents with the degree of skill and learning ordinarily possessed and used by nursing home facilities in the same or similar locality.

39. The Nursing Home Defendants owed a non-delegable duty to assist all residents, including Lucille Betncourt, in attaining and maintaining the highest level of physical, mental and psychosocial well-being.

40. The Nursing Home Defendants failed to meet the applicable standards of care and violated their duty of care to Lucille Betncourt through mistreatment, abuse and **neglect**. The Nursing Home Defendants failed to adequately supervise nurses and aides and failed to hire sufficient nurses and aides. As such, the nurses and aides were unable to provide Lucille Betncourt the requisite care, and as a result, negligent acts occurred as set forth herein. The medical negligence of Defendants includes, but is not limited to, the following acts and omissions:

a) The failure to ensure that Lucille Betncourt received the following:

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

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

c) The failure to provide, implement and ensure that an adequate nursing care plan for Lucille Betncourt was followed by nursing personnel;

d) The failure to provide Lucille Betncourt with adequate and appropriate nursing care, treatments, and medications;

e) The failure to ensure that Lucille Betncourt was assessed in order to receive adequate and proper nutrition, fluids, and therapeutic diet;

f) The failure to provide adequate care and treatment to Lucille Betncourt; and

g) The failure to adequately and appropriately monitor Lucille Betncourt and recognize significant changes in her health status.

41. 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 the Nursing Home Defendants was a proximate cause of Lucille Betncourt's injuries, which were foreseeable. Ms. Betncourt suffered personal injury, including excruciating pain and suffering, mental anguish and emotional distress, which caused her family to suffer more than normal grief upon her death. Plaintiff prays for compensatory damages against the Defendants for the wrongful death of Lucille Betncourt including the grief suffered as well as the expenses of the funeral and other related costs.

42. The Nursing Home Defendants were negligent and reckless in breaching the duties owed to Lucille Betncourt under the Medical Malpractice Act for the reasons specifically enumerated in this Complaint.

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

Count Three: Breach of the Admission Agreement

44. Plaintiff incorporates the allegations contained in paragraphs 1-43 as if fully set forth herein.

45. Before being admitted to Woodland Hills Healthcare and Rehabilitation of Jacksonville, Lucille Betncourt was required to enter into a Resident Admission Agreement, whereby the facility agreed to provide nursing and custodial care, necessary goods, services, and/or treatment to Ms. Betncourt in exchange for valuable consideration.

46. Lucille Betncourt, or those acting on his behalf, did what the Agreement for Care required of him in that valuable consideration was paid for the goods, services, care and treatment, including personal or custodial care, and professional nursing care the Nursing Home Defendants promised to provide.

47. The Nursing Home Defendants breached their contractual duties by failing to provide the care and services as described in the agreement, causing damage to Lucille Betncourt.

48. As a result, the Plaintiff is entitled to compensatory damages and consequential damages.

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

50. Plaintiff, for good cause, is unable to attach a copy of the actual admissions agreement upon which this claim is based, because it is in the possession of the Nursing Home Defendants.

Count Four: Violations of the Long-Term Care Facility Residents Rights Act

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

52. Among the Nursing Home Defendants, the licensee(s) of Woodland Hills Healthcare and Rehabilitation of Jacksonville had a statutorily-mandated duty to provide Lucille Betncourt with 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.](#)

53. 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 Lucille Betncourt.

54. 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.

55. The statutory duty imposed upon the facility licensee(s) to prevent deprivation or infringement of the resident's rights of Lucille Betncourt was non-delegable. Thus, among the Nursing Home Defendants, the licensee(s) is directly liable to Plaintiff for any deprivation and infringement of Lucille Betncourt 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 Ms. Betncourt's resident's rights caused by the Nursing Home Defendants' policies, procedures, whether written or unwritten, and common practices.

56. Any person or entity acting as an employee or agent of Woodland Hills Healthcare and Rehabilitation of Jacksonville assumed and undertook to perform the licensee's non-delegable and statutorily-mandated duty to provide Lucille Betncourt nursing home resident's rights as set forth in [Ark. Code Ann. §§ 20-10-1201 et seq.](#) in the operation and management of Woodland Hills Healthcare and Rehabilitation of Jacksonville.

57. Notwithstanding the responsibility of the licensee to protect and provide for these statutorily-mandated, nursing home resident's rights, the Nursing Home Defendants infringed upon, and Lucille Betncourt 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 Lucille Betncourt, 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 Lucille Betncourt 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 Ms. Betncourt or her designee or legal representative, which included a comprehensive assessment of the needs of Ms. Betncourt, 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 Ms. Betncourt, 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 Ms. Betncourt 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 Ms. Betncourt 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;

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

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

58. The aforementioned infringement and deprivation of the rights of Lucille Betncourt were the result of the Nursing Home Defendants' failure to do that which a reasonably careful person would do under similar circumstances.

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

60. The infringement or deprivation of the resident's rights of Lucille Betncourt by the Nursing Home 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.

Count Five: Breach of the Provider Agreement

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

62. Upon becoming a resident of Woodland Hills Healthcare and Rehabilitation of Jacksonville, Ms. Betncourt, as a Medicare and/or Medicaid recipient, became a third-party beneficiary of the contract or provider agreement between the Nursing Home Defendants and the state and federal governments, an example of which is attached as Exhibit B.

63. For consideration duly paid by Ms. Betncourt, or on his behalf, the Nursing Home Defendants agreed to provide residents with personal and custodial care and professional nursing care in compliance with the requirements set forth in the provider agreements, as well as the minimum standards of care imposed by applicable law including the statutes and regulations set out herein addition, by entering into the agreement, the Nursing Home Defendants promised to "comply with all rules, regulations, changes in and additions thereto issued by the United States Department of Health and Human Services pertaining to nursing homes, and to comply with all rules, regulations, duly promulgated changes in and additions thereto issued by the State." The

Nursing Home Defendants further agreed that “the rights and privileges of the residents [were] of primary concern to the parties” and covenanted to “protect and preserve” the rights of the residents. The parties to the contract agreed “that failure to act in a manner consistent with those rights and privileges shall constitute an immediate breach of agreement.”

64. As the name implies, the provider agreement exists to pay for and provide for resident, personal, or custodial care and professional nursing care. The provider agreements between the Nursing Home Defendants and the state and federal government were clearly intended to benefit the residents of Woodland Hills Healthcare and Rehabilitation of Jacksonville, including Lucille Betncourt.

65. The Nursing Home Defendants breached the provider agreement and committed multiple acts of nonfeasance in failing to provide the care, goods, and services to industry standards, as required by law and as agreed, including but not limited to:

- a) Nonfeasance in failing to provide, as promised, the care and services for Ms. Betncourt to attain or maintain her highest practicable physical, mental, and psychosocial well-being, in accordance with a comprehensive assessment and plan of care;
- b) Nonfeasance in failing to provide, as promised, dietary services, including special diets, supplemental feedings, special delivery preparation, assistance, and equipment required for preparing and dispensing oral feedings and special feeding devices;
- c) Nonfeasance in failing to provide, as promised, personal or custodial services and nursing care;
- d) Nonfeasance in failing, as promised, to implement policies and procedures so as to prevent infringement or deprivation of Ms. Betncourt's rights as a resident of a long term care facility;
- e) Nonfeasance in failing to provide, as promised, assistance to Ms. Betncourt in developing and carrying out a plan of care;
- f) Nonfeasance in failing to comply, as promised, with protections, duties and obligations imposed by applicable state and federal statutes and regulations as alleged herein; and
- g) Nonfeasance in failing to staff Woodland Hills Healthcare and Rehabilitation of Jacksonville with sufficient personnel to adequately meet the needs of Ms. Betncourt, failing to comply with the rules and regulations promulgated by the state and federal governments, and in failing to provide staff qualified to meet the needs of the residents.

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

67. The Nursing Home Defendants are also liable for all consequential damages, because the Nursing Home Defendants knew, or should have known, that breaches of the provider agreement would result in consequential damages to Lucille Betncourt, and, under the circumstances, the Nursing Home Defendants should have understood that it had agreed to assume responsibility for any consequential damages caused by their breaches of the provider agreement.

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

69. Plaintiff is entitled to seek punitive damages for breach of contract, because the Nursing Home Defendants knew or ought to have known, in the light of the surrounding circumstances, that their nonfeasance in breach of the provider agreement

would naturally and probably result in injury or damage, yet the Nursing Home Defendants breached the agreement in reckless disregard of the consequences from which malice may be inferred.

70. Plaintiff, for good cause, is unable to attach a copy of the actual provider agreement upon which this claim is based, because it is in the possession of the Nursing Home Defendants.

Count Six: Deceptive Trade Practices

71. Plaintiff incorporates the allegations contained in Paragraphs 1-70 as if fully set forth herein.

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

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

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

i. Physical infirmity; or

ii. A similar factor; and

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

74. [Ark. Code Ann. 4-88-108](#) provides that, when utilized in connection with the sale or advertisement of any goods, services, or charitable solicitation, it shall be unlawful for any person to (1) act, use or employ any deception, fraud or false pretense, or (2) conceal, suppress, or omit any material fact with intent that others rely on the concealment, suppression, or omission.

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

76. The Nursing Home Defendants engaged in an unconscionable, false, and/or deceptive act or practice in business, commerce and/or trade by marketing themselves and holding themselves out to the public and Lucille Betncourt as being able to meet the needs of elder residents of Woodland Hills Healthcare and Rehabilitation of Jacksonville. The Nursing Home Defendants profited greatly as a result of their deceptive trade practices, but the Nursing Home Defendants were aware that Woodland Hills Healthcare and Rehabilitation of Jacksonville could not meet the needs of its residents, including Lucille Betncourt.

77. As a direct and proximate result of the Nursing Home Defendants' wrongful conduct, Plaintiff has suffered actual damages.

CAUSES OF ACTION AGAINST THE ADMINISTRATOR DEFENDANT

Factual Allegations

78. Plaintiff incorporates the allegations contained in Paragraphs 1-77 as if fully set forth herein.

79. Upon information and belief, Angela Herd was the Administrator at Woodland Hills Healthcare and Rehabilitation of Jacksonville during the residency of Lucille Betncourt.

80. As administrator of Woodland Hills Healthcare and Rehabilitation of Jacksonville, Angela Herd was responsible for ensuring that the facility complied with all state and federal regulations related to nursing facilities. Ms. Herd had a duty to administer the facility in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychological well-being of each resident. The nursing facility, under the leadership of its administrator, is also required to operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such facilities. In addition, as a member of the facility's governing body, Ms. Herd had a duty to promulgate and implement policies and procedures for the operation and management of Woodland Hills Healthcare and Rehabilitation of Jacksonville. Defendant Angela Herd breached the duty of care she owed to Lucille Betncourt.

Negligence

81. Plaintiff incorporates the allegations contained in Paragraphs 1-80 as if fully set forth herein.

82. Angela Herd owed a duty to the residents, including Lucille Betncourt, to provide services as a reasonable administrator within accepted standards for a nursing home administrator.

83. The Administrator Defendant breached the duties owed to the residents of Woodland Hills Healthcare and Rehabilitation of Jacksonville, including Lucille Betncourt, by failing to supervise nurses and nurses' aides and failing to hire sufficient nurses and nurses' aides, and as such, the nurses and nurses' aides were unable to provide Lucille Betncourt the care she required. The negligence of the Administrator Defendant includes, but is not limited to, the following acts and omissions:

- a) Failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure that Lucille Betncourt received appropriate nursing care;
- b) Failure to ensure that Lucille Betncourt was provided with basic and necessary care and supervision;
- c) Failure to adequately hire, train, supervise, and retain a sufficient amount of competent and qualified registered nurses, licensed vocational nurses, nurse assistants and other personnel in said facility to assure that Lucille Betncourt received care, treatment, and services in accordance with state and federal law;
- d) Failure to assign nursing personnel at Woodland Hills Healthcare and Rehabilitation of Jacksonville duties consistent with their education and experience based on:
 - 1) Lucille Betncourt's medical history and condition, nursing, and rehabilitative needs;
 - 2) The characteristics of the resident population residing in the area of the facility where Lucille Betncourt was a resident; and
 - 3) Nursing skills needed to provide care to such resident population;
- e) The failure to provide sufficient numbers of qualified personnel to ensure that Lucille Betncourt was provided with a safe environment and was protected from abuse and mistreatment by the correct use of reasonable safety measures;
- f) The failure to properly in-service and orient employees to pertinent resident care needs to maintain the safety of residents;
- g) The failure to protect Lucille Betncourt from abuse and **neglect**; and

h) The failure to provide adequate supervision to the nursing staff so as to ensure that Lucille Betncourt received adequate and proper care.

84. 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 Lucille Betncourt.

85. As a direct and proximate result of the Administrator Defendant's negligent conduct, Plaintiff asserts a claim for judgment for all compensatory damages against the Administrator Defendant, including, but not limited to, medical expenses, extreme pain and suffering, mental anguish, emotional distress and loss of life in an amount exceeding that required by federal court jurisdiction in diversity of citizenship cases, to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Shirley Henry, as Special Administrator of the Estate of Lucille Betncourt, deceased, prays for judgment against Defendants as follows:

1. For damages in an amount adequate to compensate Plaintiff for the injuries and damages sustained and exceeding that required by federal court jurisdiction in diversity of citizenship cases.
2. For all general and special damages caused by the alleged conduct of Defendants.
3. For the costs of litigating this case.
4. For attorney's fees pursuant to [Ark. Code Ann. § 16-22-308](#) and [Ark. Code Ann. § 4-88-204](#).
5. For punitive damages sufficient to punish Defendants for their egregious and malicious misconduct in reckless disregard and conscious indifference to the consequences to Lucille Betncourt and to deter Defendants and others from repeating such atrocities.
6. For all other relief to which Plaintiff is entitled.

Respectfully submitted,

Shirley Henry, as Special Administrator of the Estate of Lucille Betncourt, deceased

By: /s/ Matthew D. Swindle

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