

IN THE CIRCUIT COURT OF OUACHITA COUNTY, ARKANSAS
6TH DIVISION

Sam Jeffus, as Power of Attorney for Winnie Faye Jeffus;
Tracie Caldwell, as Special Administratrix of the
Estate of Mary Ann Porter; Toni Greenlee, as Special
Administratrix of the Estate of Margie Tuft Bryant; and
Mary Frazier, as Special Administratrix of the Estate of Sylvester Driver

PLAINTIFFS

vs.

Case No. 52-CV-17-170

Ovation Health Systems, Inc.; Reliance Health Care, Inc.;
RHC Operations, Inc.; Eagle Health Systems, Inc.;
AFNC, Inc. d/b/a Eaglecrest Nursing and Rehab;
GNNC, Inc. d/b/a Gosnell Therapy and Living;
Lakeside Nursing and Rehabilitation Center, Inc.
d/b/a Lakeside Nursing Center; RTNC, Inc.
d/b/a Rector Nursing and Rehab; OCNC, Inc.
d/b/a Silver Oaks Health and Rehabilitation;
SLNC, Inc. d/b/a Southfork River Therapy and Living;
Westwood Health and Rehab, Inc.; Windcrest Health and Rehab, Inc.;
Bryan M. Adams; Anthony Brandon Adams; Gena Turner;
Amy Rollins; April Spurlock; Andrea Neil;
Rebecca Leavitt; Kathy Speaks; Kathy Langley; Brent Tyson;
Jacquelyn Maddox; John R. McPherson;
and John Doe Defendants 1 through 5

DEFENDANTS

FILED
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OUACHITA COUNTY, ARK
GLADYS F. NETTLES
CIRCUIT CLERK

FIRST AMENDED CLASS ACTION COMPLAINT

COME NOW, the Plaintiffs, on behalf of themselves and all others similarly situated, by and through their attorneys, The Edwards Firm P.L.L.C, and for their Class Action Complaint, state as follows:

INTRODUCTION

1. Plaintiffs bring this action individually and in a representative capacity pursuant to Arkansas Rule of Civil Procedure 23 on behalf of Winnie Faye Jeffus, Mary Ann Porter, Margie Tuft Bryant, and Sylvester Driver and all Arkansas Residents and estates of Arkansas

Residents who resided at the Defendants' nursing homes from April 1, 2014 through July 31, 2017 ("Residents") for damages arising out of Defendants':

- (a) violations of the Arkansas Deceptive Trade Practices Act, codified at Ark. Code Ann. 4-88-101, et seq.;
- (b) breach of Defendants' standard admission agreement;
- (c) breach of Defendants' Provider Agreement; and
- (d) unjust enrichment for services said Defendants promised to provide, were paid to provide Residents, but were not provided to Residents.

2. This case involves a business strategy by Defendants to shortchange vulnerable and disabled nursing home residents and obtain unjust payment for care services that Defendants were required to deliver, but did not provide.

3. Defendants implemented and deliberately pursued a strategy to recruit residents who were dependent upon nursing home staff for their most basic care needs in order to increase revenues and profits. While pressuring its nursing homes to target and recruit physically dependent and disabled residents, Defendants simultaneously understaffed their facilities. These continuing practices not only violated state and federal staffing laws, the Arkansas Residents' Rights Act, the Arkansas Deceptive Trade Practice Act, and Residents' Admission Agreements and Facility Provider Agreements, but also made it physically and mathematically impossible for the nursing homes made the subject of this case (hereinafter "Adams Brothers Homes" or "Facilities") to deliver essential care services Defendants claimed were required and provided to residents.

4. At the heart of this lawsuit is the question of whether the amount of staffing allocated by Defendants to work at each Adams Brothers Home was sufficient to handle the cumulative needs of Class Members who were admitted to and resided in these facilities.

Employing mandatory controls designed to limit labor hours and cost, Defendants forced the Adams Brothers Homes to staff at levels that were: (a) incompatible with the amount of care required by the resident population, and (b) insufficient to deliver the basic care that Defendants claimed was provided to residents. In short, Defendants' aggressive recruitment of physically dependent residents and ongoing violation of state and federal laws shortchanged residents, making it impossible for overloaded staff to meet the cumulative basic care needs of vulnerable, dependent residents.

5. This Complaint includes a request that a class be certified consisting of all residents and estates of all residents who resided at Eaglecrest Nursing and Rehab, Gosnell Therapy and Living, Lakeside Nursing Center, Rector Nursing and Rehab, Silver Oaks Health and Rehabilitation, Southfork River Therapy and Living, Westwood Health and Rehab, and Windcrest Health and Rehab ("the Class," or "Class Members") at any time from April 1, 2014 through July 31, 2017 ("Class Period"). Excluded from the Class are residents and estates of residents that have sued in the past or currently have lawsuits pending against any of the Defendants and any employee of the Court who may have a case pending against said Defendants.

6. Further, this Complaint prays for compensatory, economic and punitive damages, attorney's fees, interest, and costs.

PLAINTIFFS

7. The **Plaintiff, Sam Jeffus**, is the husband and Power of Attorney for Winnie Faye Jeffus pursuant to a Durable Power of Attorney executed on July 28, 2017, a copy of which is attached hereto as **Exhibit 1**. Sam Jeffus brings this class action on behalf of Winnie Faye Jeffus and all other residents of the subject Facilities ("Plaintiff Class") for the period April 1, 2014, to

July 31, 2017 (“Class Period”). Winnie Faye Jeffus was a resident of Silver Oaks Health and Rehabilitation, a nursing home located at 1875 Old Wire Road, Camden, Arkansas 71701 from approximately April 2016 until June 2016. Sam Jeffus is a resident of Ouachita County, Arkansas.

8. Plaintiff Tracie Caldwell, is the daughter of Mary Ann Porter and the Special Administratrix of the Estate of Mary Ann Porter, deceased. See **Exhibit 2**. Tracie Caldwell brings this class action on behalf of Mary Ann Porter and all other residents of the subject Facilities (“Plaintiff Class”) for the period April 1, 2014, to July 31, 2017 (“Class Period”). Mary Ann Porter was a resident of Silver Oaks Health and Rehabilitation, a nursing home located at 1875 Old Wire Road, Camden, Arkansas 71701 from approximately December 2015 until November 25, 2016. Tracie Caldwell is a resident of Ouachita County, Arkansas.

9. Plaintiff Toni Greenlee is the daughter of Margie Tuft Bryant and the Special Administratrix of the Estate of Margie Tuft Bryant, deceased. See **Exhibit 3**. Margie Tuft Bryant and all other residents of the subject Facilities (“Plaintiff Class”) for the period April 1, 2014, to July 31, 2017 (“Class Period”). Margie Tuft Bryant was a resident of Silver Oaks Health and Rehabilitation, a nursing home located at 1875 Old Wire Road, Camden, Arkansas 71701 from approximately August, 2015 until June 25, 2016. Toni Greenlee is a resident of Ouachita County, Arkansas.

10. Plaintiff Mary Frazier is the daughter of Sylvester Driver and the Special Administratrix of the Estate of Sylvester Driver, deceased. See **Exhibit 4**. Sylvester Driver and all other residents of the subject Facilities (“Plaintiff Class”) for the period April 1, 2014, to July 31, 2017 (“Class Period”). Sylvester Driver was a resident of Silver Oaks Health and Rehabilitation, a nursing home located at 1875 Old Wire Road, Camden, Arkansas 71701 from

approximately April, 2015 until April 25, 2016. Mary Frazier is a resident of Ouachita County, Arkansas.

11. Plaintiffs Sam Jeffus, Tracie Caldwell, Toni Greenlee, and Mary Frazier are hereinafter collectively referred as “Class Representatives.”

DEFENDANTS

12. **Defendant Ovation Health Systems, Inc.** is a for-profit, Arkansas limited liability company (**Exhibit 5**), authorized to conduct business in the state of Arkansas with its principal place of business at 824 Salem Road, Suite 210, Conway, Arkansas 72034. At times material to this action, Ovation Health Systems, Inc. directly participated and/or controlled the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment at the Subject Facilities. Further, at all material times, Defendant Ovation Health Systems, Inc. owned, operated, managed and/or controlled, directly and indirectly, the Subject Facilities. Said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for Plaintiffs’ damages. The causes of action set forth herein arise out of the business conducted and decisions made and implemented by Ovation Health Systems, Inc. during the Class Period. According to Secretary of State records, Brandon Adams (also known as Anthony Brandon Adams) is, and was at relevant times, the President, Secretary and the Incorporator/Organizer of said entity. The agent for service of process for Defendant Ovation Health Systems, Inc. is Brandon Adams, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

13. **Defendant Reliance Health Care, Inc.** is a for-profit, Arkansas limited liability company (**Exhibit 6**), authorized to conduct business in the state of Arkansas with its principal place of business at 824 Salem Road, Suite 210, Conway, Arkansas 72034. At times material to

this action, Reliance Health Care, Inc. directly participated and/or controlled the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment at the Subject Facilities. Further, at all material times, Defendant Reliance Health Care, Inc. owned, operated, managed and/or controlled, directly and indirectly, the Subject Facilities. Said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for Plaintiffs' damages. The causes of action set forth herein arise out of the business conducted and decisions made and implemented by Reliance Health Care, Inc. during the Class Period. According to Secretary of State records, Brandon Adams is, and was at relevant times, the President and the Incorporator/Organizer of said entity. The agent for service of process for Defendant Reliance Health Care, Inc. is Brandon Adams, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

14. **Defendant RHC Operations, Inc.** is a for-profit, Arkansas limited liability company (**Exhibit 7**), authorized to conduct business in the state of Arkansas with its principal place of business at 824 Salem Road, Suite 210, Conway, Arkansas 72034. At times material to this action, RHC Operations, Inc. directly participated and/or controlled the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment at the Subject Facilities. Further, at all material times, Defendant RHC Operations, Inc. owned, operated, managed and/or controlled, directly and indirectly, the Subject Facilities. Said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for Plaintiffs' damages. The causes of action set forth herein arise out of the business conducted and decisions made and implemented by RHC Operations, Inc. during the Class Period. According to Secretary of State

records, Brandon Adams is, and was at relevant times, the President of said entity. The agent for service of process for Defendant RHC Operations, Inc. is Dawn Bicker, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

15. **Defendant Eagle Health Systems, Inc.** is a for-profit, Arkansas limited liability company (**Exhibit 8**), authorized to conduct business in the state of Arkansas with its principal place of business at 824 Salem Road, Suite 210, Conway, Arkansas 72034. At times material to this action, Eagle Health Systems, Inc. directly participated and/or controlled the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment at the Subject Facilities. Further, at all material times, Defendant Eagle Health Systems, Inc. owned, operated, managed and/or controlled, directly and indirectly, the Subject Facilities. Said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for Plaintiffs' damages. The causes of action set forth herein arise out of the business conducted and decisions made and implemented by Eagle Health Systems, Inc. during the Class Period. According to Secretary of State records, Brandon Adams is, and was at relevant times, the President and the Incorporator/Organizer of said entity. The agent for service of process for Defendant Eagle Health Systems, Inc. is Dawn Bicker, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

16. **Defendant AFNC, Inc. d/b/a Eaglecrest Nursing and Rehab** is a for-profit, Arkansas limited liability company (**Exhibit 9**) Defendant AFNC, Inc. operated and managed a nursing home known as Eaglecrest Nursing and Rehab which was located at 916 Highway 62/412, Ash Flat, Arkansas 72513. In conducting business in the state of Arkansas, said Defendant AFNC, Inc. obtained and held (a) a state license to operate Eaglecrest Nursing and

Rehab (**Exhibit 10**), and (b) a state contract which permitted it to accept Medicare and Medicaid nursing home residents and be paid for their care and treatment at the aforesaid nursing home (**Exhibit 11**). For purposes of this Complaint, Defendant AFNC, Inc. d/b/a Eaglecrest Nursing and Rehab is referred to as **Defendant Eaglecrest**. At all times material to this action, Defendant Eaglecrest was: (a) engaged in the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment; and (b) was required at all times to comply with minimum licensing standards and minimum nursing home standards prescribed under state and federal law. The causes of action set forth herein arise out of the business conducted by and through Defendant Eaglecrest. Although Defendant Eaglecrest was licensed to operate at the address of 916 Highway 62/412, Ash Flat, Arkansas 72513, according to Secretary of State records, its principal place of business was and is 824 Salem Road, Suite 210, Conway, Arkansas 72034. Defendant Eaglecrest is 100% owned by Defendant Eagle Health Systems, Inc. which is equally owned by Defendant Anthony Brandon Adams and Defendant Bryan Adams. Defendant Eagle Health Systems, Inc. serves as President of Defendant Eaglecrest. The agent for service of process for Defendant Eaglecrest is Dawn Bicker, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

17. **Defendant GNNC, Inc. d/b/a Gosnell Therapy and Living** is a for-profit, Arkansas limited liability company (**Exhibit 12**) Defendant GNNC, Inc. operated and managed a nursing home known as Gosnell Therapy and Living which was located at 700 Moody Street, Gosnell, Arkansas 72315. In conducting business in the state of Arkansas, said Defendant GNNC, Inc. obtained and held: (a) a state license to operate Gosnell Therapy and Living (**Exhibit 13**), and (b) a state contract which permitted it to accept Medicare and Medicaid nursing home residents and be paid for their care and treatment at the aforesaid nursing home

(Exhibit 14). For purposes of this Complaint, Defendant GNNC, Inc. d/b/a Gosnell Therapy and Living is referred to as Defendant Gosnell. At all times material to this action, **Defendant Gosnell** was: (a) engaged in the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment; and (b) was required at all times to comply with minimum licensing standards and minimum nursing home standards prescribed under state and federal law. The causes of action set forth herein arise out of the business conducted by and through Defendant Gosnell. Although Defendant Gosnell was licensed to operate at the address of 700 Moody Street, Gosnell, Arkansas 72315, according to Secretary of State records, its principal place of business was and is 824 Salem Road, Suite 210, Conway, Arkansas 72034. Defendant Gosnell is 100% owned by Defendant Eagle Health Systems, Inc. which is equally owned by Defendant Anthony Brandon Adams and Defendant Bryan Adams. Defendant Eagle Health Systems, Inc. serves as President of GNNC, Inc. d/b/a Gosnell Therapy and Living. The agent for service of process for GNNC, Inc. d/b/a Gosnell Therapy and Living is Dawn Bicker, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

18. **Defendant Lakeside Nursing and Rehabilitation Center, Inc. d/b/a Lake Side Nursing Center** is a for-profit, Arkansas limited liability company **(Exhibit 15)** Defendant Lakeside Nursing and Rehabilitation Center, Inc. operated and managed a nursing home known as Lake Side Nursing Center which was located at 1207 Willow Run Road, Lake City, Arkansas 72437. In conducting business in the state of Arkansas, said Defendant Lakeside Nursing and Rehabilitation Center, Inc. obtained and held: (a) a state license to operate Lake Side Nursing Center **(Exhibit 16)**, and (b) a state contract which permitted it to accept Medicare and Medicaid nursing home residents and be paid for their care and treatment at the aforesaid nursing home

(Exhibit 17). For purposes of this Complaint, Defendant Lakeside Nursing and Rehabilitation Center, Inc. d/b/a Lake Side Nursing Center is referred to as **Defendant Lake Side**. At all times material to this action, Defendant Lake Side was: (a) engaged in the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment; and (b) was required at all times to comply with minimum licensing standards and minimum nursing home standards prescribed under state and federal law. The causes of action set forth herein arise out of the business conducted by and through Defendant Lake Side. Although Defendant Lake Side was licensed to operate at the address of 1207 Willow Run Road, Lake City, Arkansas 72437, according to Secretary of State records, its principal place of business was and is 824 Salem Road, Suite 210, Conway, Arkansas 72034. Defendant Lake Side is 100% owned by Defendant RHC Operations, Inc. Defendant Brandon Adams serves as President of Lakeside Nursing and Rehabilitation Center, Inc. d/b/a Lake Side Nursing Center. The agent for service of process for Lakeside Nursing and Rehabilitation Center, Inc. d/b/a Lake Side Nursing Center is Dawn Bicker, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

19. **Defendant RTNC, Inc. d/b/a Rector Nursing and Rehab** is a for-profit, Arkansas limited liability company (Exhibit 18) Defendant RTNC, Inc. operated and managed a nursing home known as Rector Nursing and Rehab which was located at 1023 Highway 119, Rector, Arkansas 72461. In conducting business in the state of Arkansas, said Defendant RTNC, Inc. obtained and held: (a) a state license to operate Rector Nursing and Rehab (Exhibit 19), and (b) a state contract which permitted it to accept Medicare and Medicaid nursing home residents and be paid for their care and treatment at the aforesaid nursing home (Exhibit 20). For purposes of this Complaint, Defendant RTNC, Inc. d/b/a Rector Nursing and Rehab is referred to as

Defendant Rector. At all times material to this action, Defendant Rector was: (a) engaged in the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment; and (b) was required at all times to comply with minimum licensing standards and minimum nursing home standards prescribed under state and federal law. The causes of action set forth herein arise out of the business conducted by and through Defendant Rector. Although Defendant Rector was licensed to operate at the address of 1023 Highway 119, Rector, Arkansas 72461, according to Secretary of State records, its principal place of business was and is 824 Salem Road, Suite 210, Conway, Arkansas 72034. Defendant Rector is 100% owned by Defendant Eagle Health Systems, Inc. Defendant Eagle Health Systems, Inc. also serves as President of RTNC, Inc. d/b/a Rector Nursing and Rehab. The agent for service of process for RTNC, Inc. d/b/a Rector Nursing and Rehab is Dawn Bicker, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

20. **Defendant OCNC, Inc. d/b/a Silver Oaks Health and Rehabilitation** is a for-profit, Arkansas limited liability company (**Exhibit 21**) Defendant OCNC, Inc. operated and managed a nursing home known as Silver Oaks Health and Rehabilitation which was located at 1875 Old Wire Road, Camden, Arkansas 71701. In conducting business in the state of Arkansas, said Defendant OCNC, Inc. obtained and held: (a) a state license to operate Silver Oaks Health and Rehabilitation (**Exhibit 22**), and (b) a state contract which permitted it to accept Medicare and Medicaid nursing home residents and be paid for their care and treatment at the aforesaid nursing home (**Exhibit 23**). For purposes of this Complaint, Defendant OCNC, Inc. d/b/a Silver Oaks Health and Rehabilitation is referred to as **Defendant Silver Oaks**. At all times material to this action, Defendant Silver Oaks was: (a) engaged in the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of

nursing care and treatment; and (b) was required at all times to comply with minimum licensing standards and minimum nursing home standards prescribed under state and federal law. The causes of action set forth herein arise out of the business conducted by and through Defendant Silver Oaks. Although Defendant Silver Oaks was licensed to operate at the address of 1875 Old Wire Road, Camden, Arkansas 71701, according to Secretary of State records, its principal place of business was and is 824 Salem Road, Suite 210, Conway, Arkansas 72034. Defendant Silver Oaks is 100% owned by Defendant RHC Operations, Inc. Defendant Brandon Adams serves as President of OCNC, Inc. d/b/a Silver Oaks Health and Rehabilitation. The agent for service of process for OCNC, Inc. d/b/a Silver Oaks Health and Rehabilitation is Brandon Adams, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

21. **Defendant SLNC, Inc. d/b/a Southfork River Therapy and Living** is a for-profit, Arkansas limited liability company (**Exhibit 24**) Defendant SLNC, Inc. operated and managed a nursing home known as Southfork River Therapy and Living which was located at 624 Hwy 62/412 West, Salem, Arkansas 72576. In conducting business in the state of Arkansas, said Defendant SLNC, Inc. obtained and held: (a) a state license to operate Southfork River Therapy and Living (**Exhibit 25**), and (b) a state contract which permitted it to accept Medicare and Medicaid nursing home residents and be paid for their care and treatment at the aforesaid nursing home (**Exhibit 26**). For purposes of this Complaint, Defendant SLNC, Inc. d/b/a Southfork River Therapy and Living is referred to as **Defendant Southfork**. At all times material to this action, Defendant Southfork was: (a) engaged in the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment; and (b) was required at all times to comply with minimum licensing standards and minimum nursing home standards prescribed under state and federal law.

The causes of action set forth herein arise out of the business conducted by and through Defendant Southfork. Although Defendant Southfork was licensed to operate at the address of 624 Hwy 62/412 West, Salem, Arkansas 72576, according to Secretary of State records, its principal place of business was and is 824 Salem Road, Suite 210, Conway, Arkansas 72034. Defendant Southfork is 100% owned by Defendant Eagle Health Systems, Inc. which is equally owned by Defendant Anthony Brandon Adams and Defendant Bryan Adams. Defendant Eagle Health Systems, Inc. serves as President of SLNC, Inc. d/b/a Southfork River Therapy and Living. The agent for service of process for SLNC, Inc. d/b/a Southfork River Therapy and Living is Dawn Bicker, 824 Salem Road, Suite 210, Conway, Arkansas 72034.

22. **Defendant Westwood Health and Rehab, Inc.** is a for-profit, Arkansas limited liability company (**Exhibit 27**) Defendant Westwood Health and Rehab, Inc. operated and managed Westwood nursing home which was located at 802 S. West End Street, Springdale, Arkansas 72764. In conducting business in the state of Arkansas, said Defendant Westwood Health and Rehab, Inc. obtained and held: (a) a state license to operate Westwood (**Exhibit 28**), and (b) a state contract which permitted it to accept Medicare and Medicaid nursing home residents and be paid for their care and treatment at the aforesaid nursing home (**Exhibit 29**). For purposes of this Complaint, Defendant Westwood Health and Rehab, Inc. is referred to as **Defendant Westwood**. At all times material to this action, Defendant Westwood was: (a) engaged in the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment; and (b) was required at all times to comply with minimum licensing standards and minimum nursing home standards prescribed under state and federal law. The causes of action set forth herein arise out of the business conducted by and through Defendant Westwood. Although Defendant Westwood

was licensed to operate at the address of 802 S. West End Street, Springdale, Arkansas 72764, according to Secretary of State records, its principal place of business was and is 401 W. Center, Searcy, Arkansas 72143. Defendant Westwood is 100% owned by Defendant RHC Operations, Inc. Defendant Brandon Adams serves as President of Westwood Health and Rehab, Inc. The agent for service of process for Westwood Health and Rehab, Inc. is Mike Millar, 401 W. Center, Searcy, Arkansas 72143.

23. **Defendant Windcrest Health and Rehab, Inc.** is a for-profit, Arkansas limited liability company (**Exhibit 30**) Defendant Windcrest Health and Rehab, Inc. operated and managed Windcrest nursing home which was located at 2455 Lowell Road, Springdale, Arkansas 72764. In conducting business in the state of Arkansas, said Defendant Windcrest Health and Rehab, Inc. obtained and held: (a) a state license to operate Windcrest (**Exhibit 31**), and (b) a state contract which permitted it to accept Medicare and Medicaid nursing home residents and be paid for their care and treatment at the aforesaid nursing home (**Exhibit 32**). For purposes of this Complaint, Defendant Windcrest Health and Rehab, Inc. is referred to as **Defendant Windcrest**. At all times material to this action, Defendant Windcrest was: (a) engaged in the for-profit custodial care of elderly individuals, chronically infirmed, mentally impaired, and/or those individuals in the need of nursing care and treatment; and (b) was required at all times to comply with minimum licensing standards and minimum nursing home standards prescribed under state and federal law. The causes of action set forth herein arise out of the business conducted by and through Defendant Windcrest. Although Defendant Windcrest was licensed to operate at the address of 2455 Lowell Road, Springdale, Arkansas 72764, according to Secretary of State records, its principal place of business was and is 401 W. Center, Searcy, Arkansas 72143. Defendant Windcrest is 100% owned by Defendant RHC Operations,

Inc. Defendant Brandon Adams serves as President of Windcrest Health and Rehab, Inc. The agent for service of process for Westwood Health and Rehab, Inc. is Mike Millar, 401 W. Center, Searcy, Arkansas 72143.

24. **Defendant Anthony Brandon Adams and Defendant Bryan M. Adams** controlled each Adams Brothers Home and were intimately involved in the staffing decisions at each Facility. Said Defendants had authority to determine to staffing levels at each of the Adams Brothers Homes, exercise control over staffing determinations and were intimately involved in staffing budgetary decisions and ratified staffing decisions at each Facility. Further, Defendant Anthony Brandon Adams and Defendant Bryan M. Adams controlled, participated in, had authority over marketing, admission of residents, human resources, employee training, and the creation and implementation of policies and procedures which directly impacted the basic care services that nursing home staff could provide residents at the Subject Facilities. The causes of action stated herein as to Defendant Anthony Brandon Adams and Defendant Bryan M. Adams arise out of their direct participation in, control over, domination and ratification of decisions that caused chronic understaffing, physically impossible workload and systematic failure to deliver basic care to residents at the Adams Brothers Homes during the Class Period. Moreover, at all material times, Defendant Anthony Brandon Adams and Defendant Bryan M. Adams were each a “control person” as defined by in Ark. Code Ann. § 4-88-113(d)(1) and are therefore jointly and severally liable for the Plaintiffs’ damages. Defendant Anthony Brandon Adams served as President of Lakeside Nursing and Rehabilitation Center, Silver Oaks Health and Rehab, Westwood Health and Rehab, Windcrest Health and Rehab. His brother, Defendant Bryan Adams served as Vice President of these facilities. Moreover, Defendant Anthony Brandon Adams and Defendant Bryan M. Adams each own 50% of Defendant Lakeside, Defendant Silver

Oaks, Defendant Westwood and Defendant Windcrest. They also each own 50% of Defendant Eagle Health Systems, Inc. which serves as the Owner and President of the remaining Adams Brothers Homes – Defendant Southfork, Defendant Gosnell, Defendant Rector, and Defendant Eaglecrest. Defendant Anthony Brandon Adams can be served with process at 2925 N. Chapel View Drive, Fayetteville, Arkansas 72703, and Defendant Bryan M. Adams can be served with process at 4699 Prince Street, Conway, Arkansas 72034.

25. Upon information and belief, **Defendant Gena Turner** served as Marketing Director for Reliance Health Care, Inc. during times material to this action. Defendant Turner was intimately involved in marketing and decisions to admit residents at the Adams Brothers Homes. Further, Defendant Turner exercised control over, participated in, had authority for marketing, admission of residents, and the creation and implementation of marketing and admissions policies and procedures, which directly impacted the cumulative amount of the basic care services needed by residents. The causes of action stated herein as to Defendant Turner arise out of her direct participation in, control over, domination and ratification of marketing and admissions decisions that increased the care workload, and made it physically impossible for the limited numbers of staff at the Adams Brothers Homes to provide the needed care during the Class Period. Defendant Turner's conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. Further, Defendant Turner was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs' damages. Gena L. Turner may be served with process at 5200 Wilde Dr., Conway, Arkansas 72034-9405 (Faulkner County).

26. Upon information and belief, **Defendant Amy Rollins** served as Operations Coordinator for Reliance Health Care, Inc. during times material to this action. Amy Rollins was

a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs' damages. Amy Rollins' conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. Amy R. Rollins may be served with process at 28 White Oak Dr., Cabot, Arkansas 72023-3931 (Lonoke County).

27. Upon information and belief, **Defendant April Spurlock** served as the licensed nursing home Administrator of Defendant Eaglecrest. By law, Eaglecrest Nursing and Rehab was required to have a full time Administrator who "must have responsibility for overall operation of the facility." Ark. Reg. 3.01.2. To the extent Defendant Spurlock's authority for the overall operation of Eaglecrest Nursing and Rehab, including staffing and admission decisions, was not usurped, interfered with, or stripped from her, said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs' damages. Further, Defendant Spurlock's conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. April Dawn Spurlock may be served with process at 2 Hualapi Dr., Cherokee Village, Arkansas 72529-5616 (Fulton County).

28. Upon information and belief, **Defendant Andrea Neil** served as the licensed nursing home Administrator of Defendant Gosnell. By law, Gosnell Therapy and Living nursing home was required to have a full time Administrator who "must have responsibility for overall operation of the facility." Ark. Reg. 3.01.2. To the extent Defendant Neil's authority for the overall operation of Gosnell, including staffing and admission decisions, was not usurped, interfered with, or stripped from her, said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs' damages. Further, Defendant Neil's conduct forms a significant basis for the claims asserted

herein and from whom Plaintiffs seek significant relief. Andrea Ruth Neil may be served with process at 711 Broadmoor St., Blytheville, Arkansas 72315-1270 (Mississippi County).

29. Upon information and belief, **Defendant Rebecca Leavitt** served as the licensed nursing home Administrator of Defendant Lakeside. By law, Lakeside Nursing Center was required to have a full time Administrator who “must have responsibility for overall operation of the facility.” Ark. Reg. 3.01.2. To the extent Defendant Leavitt’s authority for the overall operation of Lakeside, including staffing and admission decisions, was not usurped, interfered with, or stripped from her, said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs’ damages in this capacity. Further, Defendant Leavitt’s conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. Rebecca Jean Leavitt may be serve with process at 5203 Johnwood Dr., Jonesboro, Arkansas 72404-9029 (Craighead County).

30. Upon information and belief, **Defendant Kathy Speaks** served as the licensed nursing home Administrator of Defendant Rector. By law, Rector Nursing and Rehab was required to have a full time Administrator who “must have responsibility for overall operation of the facility.” Ark. Reg. 3.01.2. To the extent Defendant Speak’s authority for the overall operation of Rector, including staffing and admission decisions, was not usurped, interfered with, or stripped from her, said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs’ damages in this capacity. Further, Defendant Speaks’ conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. Kathy Jo Speaks may be served with process at 4805 Randles Rd., Paragould, Arkansas 72450-2540 (Greene County).

31. Upon information and belief, **Defendant Kathy Langley** served as the licensed nursing home Administrator of Defendant Silver Oaks. By law, Silver Oaks Health and Rehabilitation was required to have a full time Administrator who “must have responsibility for overall operation of the facility.” Ark. Reg. 3.01.2. To the extent Defendant Langley’s authority for the overall operation of Silver Oaks, including staffing and admission decisions, was not usurped, interfered with, or stripped from her, said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs’ damages. Further, Defendant Langley’s conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. Kathy Beevers Langley may be served with process at 1100 Lakewood Rd., Camden, Arkansas 71701-7013 (Ouachita County).

32. Upon information and belief, **Defendant Brent Tyson** served as the licensed nursing home Administrator of Defendant Southfork. By law, Southfork River Therapy and Living nursing home was required to have a full time Administrator who “must have responsibility for overall operation of the facility.” Ark. Reg. 3.01.2. To the extent Defendant Tyson’s authority for the overall operation of Southfork, including staffing and admission decisions, was not usurped, interfered with, or stripped from him, said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs’ damages. Further, Defendant Tyson’s conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. Brent A. Tyson may be served with process at 143 Chaney Dr., Melbourne, Arkansas 72556-8904 (Izard County).

33. Upon information and belief, **Defendant Jacquelyn Maddox** served as the licensed nursing home Administrator of Defendant of Westwood. By law, Westwood Health and

Rehab was required to have a full time Administrator who “must have responsibility for overall operation of the facility.” Ark. Reg. 3.01.2. To the extent Defendant Maddox’s authority for the overall operation of Westwood, including staffing and admission decisions, was not usurped, interfered with, or stripped from her, said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs’ damages. Further, Defendant Maddox’s conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. Jacqueline Nichole Maddox may be served with process at 40 Ash St., Farmington, Arkansas 72730-3132 (Washington County).

34. Upon information and belief, **Defendant John R. McPherson** served as the licensed nursing home Administrator of Defendant Windcrest. By law, Windcrest Health and Rehab was required to have a full time Administrator who “must have responsibility for overall operation of the facility.” Ark. Reg. 3.01.2. To the extent Defendant McPherson’s authority for the overall operation of Windcrest, including staffing and admission decisions, was not usurped, interfered with, or stripped from him, said Defendant was a control person as defined in Ark. Code Ann. § 4-88-113(d)(1) and is therefore jointly and severally liable for the Plaintiffs’ damages. Further, Defendant McPherson’s conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief. John Ronald McPherson may be served with process at 3604 W. Laney St., Rogers, Arkansas 72758-4514 (Benton County).

35. The identities of additional John Doe Defendants 1 through 5 are unknown at the time of the filing of this Class Action Complaint.

36. Whenever in this pleading the term “Controlling Defendants” is used, it shall collectively mean the following named Defendants: (a) Ovation Health Systems, Inc.; (b)

Reliance Health Care, Inc.; (c) Eagle Health Systems, Inc.; (d) Bryan M. Adams; (e) Anthony Brandon Adams; (f) Gena Turner; and (g) Amy Rollins.

37. Whenever in this pleading the term “Licensed Operators” is used, it shall collectively mean the following named Defendants: (a) Eaglecrest; (b) Gosnell; (c) Lakeside;(d) Rector; (e) Silver Oaks; (f) Southfork; (g) Westwood; and (h) Windcrest. As set forth above, these Defendants either held a license in Arkansas to operate a nursing home in accordance with state and federal law.

38. Whenever in this pleading the term “Licensed Administrators” is used, it shall collectively mean the following named Defendants: (a) April Spurlock; (b) Andrea Neil; (c) Rebecca Leavitt; (d) Kathy Speaks; (e) Kathy Langley; (f) Brent Tyson; (g) Jacquelyn Maddox; and (h) John R. McPherson. As set forth above, these Defendants held a license in Arkansas as a nursing home Administrator and were responsible for the overall operation of a nursing home and compliance with state and federal law.

LEGAL BASIS FOR CONTROLLING DEFENDANTS’ LIABILITY

39. Controlling Defendants are sued for their active and direct participation in the wrongful conduct made the basis of this lawsuit and by reason of their legal status as “control persons” as defined in Ark. Code Ann. § 4-88-113(d)(1), having: (a) managed, controlled and directed the wrongful conduct made the basis of this lawsuit; (b) disregarded the duties and responsibilities which the Subject Facilities, as licensed nursing homes, owed to the State of Arkansas and its residents; (c) created the conditions described herein by interfering with and causing the Adams Brothers Homes to violate Arkansas and federal statutes, laws and minimum regulations governing the operation of said nursing homes; (d) superseding the statutory rights

and duties owed to nursing home residents through its directives, policies, and control of the Adams Brothers Homes; and (e) caused the damages complained of herein.

40. Controlling Defendants' interference, domination, intervention, and direct participation in the operations of the Facilities were rooted in their knowledge that small changes in the resident census/occupancy of the nursing homes dramatically impacted Defendants' overall revenues.

41. Controlling Defendants also knew that control of staffing costs, the single largest expense to the nursing home business, was vital to protecting and increasing Defendants' profit margins.

42. Driven by the desire to grow revenues and increase profits, Controlling Defendants:

- (a) Tightly monitored and controlled the census/occupancy targets and levels in their Facilities on a routine basis;
- (b) Established, monitored, and enforced census, occupancy, staffing, and labor cost targets on a routine basis;
- (c) Established and enforced in each Facility an aggressive marketing and sales strategy directed at large referral sources of residents, such as hospitals, physicians and health maintenance organizations;
- (d) Closely monitored resident discharges, transfers and bed vacancies in their Facilities on a frequent basis.

43. In addition to being legally responsible for the wrongful conduct detailed above as active and direct participants, and as "control persons" as defined in Ark. Code Ann. § 4-88-113(d)(1), Plaintiffs would also plead that Controlling Defendants are also vicariously liable and

responsible for the wrongful acts and causes of action stated within this Petition and the resultant damages under the following alternative legal theories:

(a) **Agency:** At all times material to this lawsuit: (1) one or more of the Controlling Defendants ratified or authorized the acts or omissions of the Adams Brothers Homes, which acted as the agent for Controlling Defendants; or (2) Controlling Defendants and the Defendant Adams Brothers Homes acted as the agent for each other.

(b) **Joint Enterprise:** In the alternative, Controlling Defendants remain liable for the acts and omissions of the others because said Controlling Defendants operated the Adams Brothers Homes as a joint enterprise. Controlling Defendants engaged in a joint venture in the operation, management, and maintenance of the Adams Brothers Homes. These entities entered into an agreement with the common purpose of operating, managing, and maintaining the Adams Brothers Homes. These entities had an equal right to control their venture as a whole, as well as to control the operation and management of the subject facility. Likewise, Controlling Defendants entered into a joint venture with each other in the operation, management and maintenance of Adams Brothers Homes; and, therefore, are liable for the acts and omissions of the others because said Controlling Defendants operated as a joint enterprise.

(c) **Alter Ego:** At all times material to this lawsuit, the Adams Brothers Homes were the alter ego of the Controlling Defendants. The Adams Brothers Homes were a mere conduit through which Controlling Defendants did business. The management and the operations of the Subject Facilities were so assimilated

within the Controlling Defendants that the aforementioned Adams Brothers Homes were simply names through which one or more of the Controlling Defendants conducted their business. Controlling Defendants completely dominated and controlled the business affairs of the Adams Brothers Homes which were organized and operated as a mere tool of the Controlling Defendants. Any assertions by Controlling Defendants and the Adams Brothers Homes that each are separate corporate fictions having “an independent and separate existence” is nothing more than a sham and part of a scheme to perpetuate fraud, promote injustice and evade existing legal obligations.

**LEGAL BASIS FOR LICENSED OPERATORS' AND
LICENSED ADMINISTRATORS' LIABILITY**

44. Licensed Operators and Licensed Administrators are sued for their active and direct participation in the wrongful conduct made the basis of this lawsuit having violated state and federal laws and Admission Agreements and Provider Agreements. Further, Plaintiffs allege that said Defendants' conduct forms a significant basis for the claims asserted herein and from whom Plaintiffs seek significant relief.

45. Additionally, to the extent the Licensed Administrators' authority for the overall operation of the Adams Brothers Homes, including staffing decisions, admission decisions, was not usurped, interfered with, or stripped from them, said Defendants were control persons as defined in Ark. Code Ann. § 4-88-113(d)(1) and are therefore jointly and severally liable for the Plaintiffs' damages.

JURISDICTION & VENUE

46. The Court has jurisdiction over the parties and venue is proper. Substantial acts giving rise to the causes of action asserted herein occurred in this State and within this venue.

Additionally, insomuch as all proposed Class Representatives are residents of Ouachita County, Arkansas, venue is proper in Ouachita County pursuant to Ark. Code Ann. § 16-60-101(b)(1) and (b)(2).

BACKGROUND AND FACTUAL ALLEGATIONS

47. This case arises from Defendants' systemic failures to have sufficient staff to meet the needs of residents at the Subject Facilities which caused Plaintiffs and the proposed Class Members to suffer economic and compensatory damages described in more detail below.

48. At all material times, Defendants were required to comply with all state and federal statutes and regulations governing the operation of nursing homes in Arkansas, including Ark. Code Ann. § 20-10-1402 (b)(1) which provides:

(a) The Department of Human Services shall not issue or renew a license of a nursing facility unless that facility employs the **direct-care staff needed to provide continuous twenty-four-hour nursing care and service to meet the needs of each resident** of the nursing facility and the staffing standards required by all state and federal regulations.

(b) [Except for nursing facilities that the Office of Long-Term Care designates or certified as Eden Alternative nursing facilities or Green House Project nursing facilities] the staffing standard required by this subchapter shall be the minimum number of direct-care staff required by nursing facilities and **shall be adjusted upward to meet the care needs of residents.** [emphasis added]

49. Further, at all material times:

(a) Defendants were required by state and federal law to employ the direct care staff needed to provide continuous 24-hour nursing care and services to **meet the needs of each resident.** Ark. Code Ann. § 20-10-1402 (a); 42 U.S.C. 1396r § 1819(4)(c) and § 1919(4)(c); and 42 C.F.R. § 483.30.

- (b) Defendants were prohibited by state law from admitting residents whose **needs**, in conjunction with those of existing residents, could not be met by the nursing home.¹
- (c) Defendants were additionally required by state law to comply with minimum direct care staffing to resident **ratios** as set forth in Ark. Code Ann. § 20-10-1403.²

50. Defendants were aware at all material times that they were required to comply with both Staffing Laws Based on Residents' Needs and the Minimum Staffing Ratio Laws. Merely complying with the bare bones Minimum Staffing Ratio Laws did not relieve Defendants from complying with state and federal Staffing Laws Based on Residents' Needs.

51. The well-known purpose of the above laws was and is to protect the health and safety of Arkansas citizens who depend upon nursing homes to meet their basic care and treatment needs. An Arkansas nursing home that:

- (a) fails to adjust its number of direct care staff to meet the needs of residents violates Arkansas public policy and state law;
- (b) fails to provide continuous 24-hour nursing care and services to meet the needs of its residents violates public policy and state and federal law;

¹ The above laws [Ark. Code Ann. §20-10-1402 (b)(1); Ark. Code Ann. §20-10-1402 (a); 42 U.S.C. 1396r §1919(4)(c) and §1919(4)(c); and 42 C.F.R. §483.30] are also collectively referred to in this pleading as "Staffing Laws Based on Residents' Needs."

² The laws found in Ark. Code Ann. §20-10-1403 are also referred to in this pleading as "Minimum Staffing Ratio Laws."

- (c) admits residents whose needs, in conjunction with the needs of existing residents, overload staff and cannot be met by the facility, violates public policy and state law; and
- (d) fails to comply with minimum staffing ratios violates public policy and state law.

52. Defendants were fully aware that residents admitted to the Adams Brothers Homes were elderly, disabled, cognitively impaired, and had limited physical and mental capacity to perform life's most basic functions due to chronic and acute illness or conditions. The amount of nursing care, medical treatment, and rehabilitation required to meet the basic needs of the resident population in each Adams Brothers Home and maintain residents' limited functional status, increase their functional status, or simply allow residents to live in a safe and dignified manner equated to a huge workload burden that nursing home staff was required to shoulder. By reason of the dependent nature of the residents that Defendants admitted to and retained in their facilities, the work at the Adams Brothers Homes was extremely labor intensive.

53. By reason of their chronic and acute illnesses, not only did residents at these facilities depend on direct care staff to provide all of their skilled care and treatments, but also to provide the daily living care needed to meet their most basic needs, including:

- (a) Toileting assistance;
- (b) Incontinence care and changing of wet and soiled clothing and linens;
- (c) Assistance transferring to and from bed and wheelchair;
- (d) Assistance with dressing and personal hygiene;
- (e) Assistance with bathing;
- (f) Assistance with turning and repositioning in bed or chair;

- (g) Assistance with eating and drinking enough fluids; and
- (h) Assistance with walking and range of motion exercises.

54. Defendants' ongoing and routine practice of violating Staffing Laws Based on the Needs of Residents and Minimum Staffing Ratio Laws made it mathematically and humanly impossible for the limited numbers of direct care staff allocated to work at Defendants' Facilities to provide required care services. Additionally, Defendants' continuing practice of admitting new residents to its facilities whose needs in conjunction with the needs of existing residents exceeded Defendants' capacity to provide all the care services required, further overloaded direct care staff and caused routine care omissions and unacceptable waits for care which violated state laws, regulations and standard practices.

55. The cumulative amount of daily living care needed by the residents vastly exceeded the physical and human capacity of the limited number of caregivers that Defendants allowed to work in each Adams Brothers Home. In other words, due to Defendants' continuing violations of Staffing Laws Based on the Needs of Residents, Residents routinely did not receive the basic daily living care they needed and were promised. Each dependent Resident who was admitted to and resided at Defendants' Facilities increased the cumulative workload imposed upon the limited numbers of staff allocated to work at the Facilities. With the limited budgets for direct care staffing, the supply of direct care hours fell far short of the hours needed to adequately provide all basic daily living care needed by Residents.

56. Consequently, Defendants' understaffing led to a pattern and practice of failing to provide basic daily living care at the Facilities to the Residents during the Class Period. For example, the Facilities failed to provide enough staff:

- (a) To regularly provide toileting, incontinence care, and basic hygiene care, leaving dependent residents in dirty diapers, dirty clothes, and dirty beds for hours at a time.
- (b) To wash and bathe dependent residents.
- (c) To timely respond to call lights rung by Residents. Residents were left to soil themselves while waiting for assistance; others fell while attempting to walk to the bathroom unaided.
- (d) To re-position bed-bound and immobile Residents; many Residents remained in the same position for hours at a time, which can and sometimes did result in painful, infection-prone pressure sores.
- (e) To assist dependent residents with meals. Many Residents were unable to eat or drink adequate amounts in the limited time allotted for this service, causing some of them to develop weight loss and dehydration.
- (f) To get dependent residents up, dressed, and out of bed.
- (g) To undertake ROM exercises – moving their joints and limbs, and assisting vulnerable residents who could walk or exercise. Without this assistance, residents' lost mobility, rendering them even less independent.

57. In sum, Defendants' wrongful conduct created a profound gap between the services that the Adams Brothers Homes **promised and were required to provide** Residents versus the services that the Facilities **actually provided** to Residents. This difference forms the basis of the significant relief Plaintiffs seek on behalf of the Class.

58. Although Defendants' understaffing practices saved their business enterprise significant money, it came with a human cost to Residents' dignity, comfort, and safety.

Residents were left for long periods of time in their own urine and waste; were not bathed, cleaned, fed, watered, dressed, gotten up, repositioned, or provided basic daily living care in accordance with laws, regulations and standard practices. Significantly, the failure to provide adequate staff not only violated the law and Defendants' promises to the Residents and their families, it also degraded Residents and stripped them of their dignity.

CAUSES OF ACTION AGAINST THE DEFENDANTS

59. As previously stated, Plaintiffs bring this action individually and in a representative capacity pursuant to Arkansas Rule of Civil Procedure 23 against Defendants for damages arising out of:

- (a) violations of the Arkansas Deceptive Trade Practices Act, codified at Ark. Code Ann. § 4-88-101, et seq.;
- (b) breach of Defendants' standard admission agreement;
- (c) breach of Defendants' Provider Agreement; and
- (d) unjust enrichment for service said Defendants promised to provide, Residents were said to provide Residents, but did not provide Residents.

60. Plaintiffs allege that the Defendants' ongoing and routine practice of violating Staffing Laws Based on Residents' Needs and State Minimum Staffing Ratios breeched Resident Admission Agreements, Provider Agreements, violated Residents' Rights Act and constituted violations of the Arkansas Deceptive Trade Practices Act. Plaintiffs seek damages for breach of these Agreements; damages under the DTPA as well as damages for unjust enrichment for receiving payments they were not legally entitled to receive by engaging in the deceptive business practice of understaffing the Facilities and violating state and federal laws, including the

Residents' Rights Act on behalf of the named Plaintiffs and all residents and estates of residents who resided at the Facilities from April 1, 2014 to July 31, 2017.³

61. From April 1, 2014 to July 31, 2017, the Defendants provided custodial care to more than 500 Residents at the Facilities. Accordingly, the class plaintiffs are so numerous that joinder of all individual claims is impracticable.

62. Upon information and belief, at or near the time of admission to the Facilities, all residents were required to sign the same or substantially the same "Admission Agreement," an example of which is attached as **Exhibit 33**.

63. In the Admission Agreement attached hereto as **Exhibit 33**, the Defendants promised to furnish the following to Residents/Class Members:

Basic care. The Facility agrees to furnish routine nursing and personal care, lodging, meals, linens and bedding, and **such other items as may be required by the Patient's known physical condition or by law for his or her health, safety, and welfare.** [emphasis added]

Administration of treatment. The Facility agrees to administer medication, treatments, or special diets as ordered by the Patient's attending physician.

Obtaining physician services. The Facility agrees to exercise due diligence to obtain services of the Patient's personal physician when the Patient's condition requires such medical attention."

64. By promising Residents and Class Members that the Facilities would "Furnish routine nursing and personal care and such other items as may be required by the patients' known physical condition or **required by law** for his or her health and safety," the subject nursing homes acknowledged and expressly represented that they would comply with health and

³ Excluded from the class are Residents and estates of Residents that have sued in the past or currently have lawsuits pending against any of the Defendants, employees of the Defendants, and all employees of the Court in which this case is pending.

safety laws which included Staffing Laws Based on Residents' Needs and State Minimum Staffing Ratio Laws.

65. Defendants made similar promises to comply with all state laws and regulations in their Provider Agreement with the State to which all Residents were third party beneficiaries.

66. By reasons of the above promises and state and Federal laws assumed and imposed on the defendants referenced above, said Defendants owed a non-delegable duty to all Residents/Plaintiffs' class to provide safe, adequate and appropriate staffing at all times.

67. In violating the above staffing laws, Defendants saved significant money and profited at the expense of all residents. Defendants operated and managed the Facilities so as to maximize profits by reducing staffing levels below that needed to provide adequate care to residents. These staffing levels prevented the delivery of care and services the Defendants promised to provide and falsely claimed they had provided to Residents. During the course of engaging in ongoing violations of state and federal staffing laws, Defendants knew that the source of payment for care provided to their residents derived from residents' Social Security checks, Medicare Insurance, Medicaid and private payments. Defendants were aware that such payments obligated them to use and administer this money (resources) paid from these sources to meet the needs of their residents and maintain their highest practical well-being. Rather than using this money for needed staffing, Defendants diverted it to pay for non-care related items, benefits and profits. Thus, Defendants intentionally and/or with reckless disregard for the consequences of their actions caused staffing levels at the Facilities to be set so that the personnel on duty could not reasonably meet the needs of the residents.

68. All residents of the Facilities suffered as a consequence of Defendants' chronic and institutionalized understaffing. The lack of personnel in the Facilities resulted in residents

receiving a level of care (1) that was below the level of care that Defendants represented they were able to provide in their Admission Agreements and Provider Agreements, and (2) that failed to comply with state and federal Staffing Laws Based on Residents' Needs and State Minimum Staffing Ratio Laws.

69. The pervasive common question is whether the Facilities were chronically understaffed so as to violate the residents' statutory and contractual rights and breached their legal duty to adequately staff the Facilities. There are other questions of law and fact common to the Plaintiff Class which predominate over questions affecting only individual class members.

Such common questions include, but are not limited to:

- (a) Whether the standard Admission Agreement required the Facilities to have sufficient staff to meet the care needs of the residents as required by state and federal laws and regulations;
- (b) Whether Ark. Code Ann. § 20-10-1201, et seq., imposes minimum staffing requirements requiring the Facilities to have sufficient staff to meet the care needs of the residents;
- (c) Whether Defendants failed to meet the minimum staffing requirements of Ark. Code Ann. § 20-10-1201, et seq., and the Defendants' admission agreement by failing to provide sufficient staff to meet the care needs of the residents;
- (d) Whether failure to meet the minimum staffing requirements required by state and federal laws and regulations breaches the Defendants' admission agreement, Ark. Code Ann. § 20-10-1201, et seq., and the Arkansas Deceptive Trade Practices Act;
- (e) Whether chronically understaffing the Facilities in violation of state and federal laws and regulations is a deceptive business practice and/or an unconscionable business practice and/or a violation of the Arkansas Deceptive Trade Practices Act;
- (f) Whether the Defendants owed a legal duty to the residents to staff the Facilities in compliance with state and federal laws and regulations;
- (g) Whether failure to staff the Facilities in compliance with state and federal laws and regulations is a breach of the provider agreement;

- (h) Whether the admission agreement's failure to disclose the Facilities' history of understaffing is an omission or concealment which constitutes deceptive business practice and/or a violation of the Arkansas Deceptive Trade Practices Act;
- (i) Whether the Defendants were unjustly enriched;
- (j) Whether the Defendants' actions degraded the residents and stripped them of their dignity;
- (k) Whether the Defendants were required to use the money they received from Medicare and Medicaid to provide necessary staffing to meet the care needs of the residents;
- (l) If so, whether the Defendants used the money received from Medicare and Medicaid to provide adequate staff to meet the care needs of residents;
- (m) Whether the Defendants are required to comply with all state and federal staffing laws and regulations when they received money from Medicare and Medicaid;
- (n) Whether the Defendants were in compliance with all state and federal staffing laws when they received money from Medicare and Medicaid;
- (o) Whether the Defendants' actions were willful, wanton or demonstrated reckless disregard of the rights of the Plaintiffs; and
- (p) Whether Controlling Defendants, Licensed Administrators, and the named individuals are control persons as defined in Ark. Code. Ann. § 4-88-113(d)(1) and therefore jointly and severally liable for the damages suffered by the Plaintiff Class for the Defendants' deceptive trade practices.

70. The Plaintiffs will fairly and adequately protect the interest of the Plaintiff Class and have familiarity with the allegations expressed herein and are able to assist in decision making as to the conduct of the litigation.

71. Plaintiff's claims are typical of the claims of the class because the Class Representatives' claims arise from the Defendants' standard and routine practice of failing to meet the minimum staffing requirements imposed by state law and their standard admission agreement. The chronic understaffing at the Facility made it impossible for the limited number of staff to perform their tasks at a level which complied with the protections afforded to all

Residents by the Resident Rights Act and at levels promised by the Defendants Admission and Provider Agreements.

72. By understaffing the Facilities, Defendants acted willfully, wantonly and in reckless disregard of the residents' rights intentionally placing profits over people and knowingly taking advantage of residents who were unable to protect their interests because of their physical and mental infirmities. Systemic understaffing of the Facilities directly resulted in undignified living conditions for the residents, a breach of the Admission Agreement, a breach of the provider agreement, a violation of state and federal law, a breach of the Facilities' duties to adequately staff the Facilities, and unjust enrichment of the Defendants. The damages and injuries sustained by the Proposed Class Representatives are typical of the class and further evidence understaffing at the Facilities.

73. By understaffing the Facilities, Defendants placed profits over compliance with state law the well-being of the residents. The decision to understaff the Facilities was made and implemented by the owners, board members, management, employees and agents of Defendants. Defendants' conduct constituted deceptive and unconscionable business practices, violated state law, federal law and regulations and was committed in reckless disregard of the Plaintiffs' rights. Moreover, Defendants were aware that by engaging in the conduct alleged herein, the well-being of all residents would be adversely affected as detailed herein.

74. As a direct and proximate result of the Defendants' conduct, the Plaintiffs and Plaintiffs' Class has suffered actual damage, including but not limited to damages for loss of dignity, mental anguish and economic damage. Moreover, the Plaintiffs, or someone acting on behalf of the Plaintiffs, provided payment in exchange for services which: (a) were not provided;

(b) were not as represented by the Defendants' Admission Agreement and Provider Agreement; and (c) did not comply with the Arkansas Residents' Rights Act.

75. Plaintiff have retained counsel qualified, experienced and able to conduct the litigation, and Plaintiffs have made arrangements to cover the costs associated with this litigation.

76. If each class member were required to pursue individual actions, it would be economically and judicially unfeasible. A class action is appropriate and the superior method for the fair and efficient adjudication of this controversy.

COUNT I:
VIOLATIONS OF ARKANSAS DECEPTIVE TRADE PRACTICES ACT
ARK. CODE ANN. §4-88-101, ET SEQ.

77. Plaintiffs incorporate the allegations contained in Paragraphs 1–76 as if fully set forth herein.

78. At all times pertinent to this cause of action, Plaintiffs were “disabled person[s]” as defined by the Arkansas Deceptive Trade Practices Act, Ark. Cod. Ann. § 4-88-201(b). As a “disabled person” within the meaning of the Deceptive Trade Practices Act, the Plaintiffs have a private cause of action to recover actual damages, punitive damages, and reasonable attorney’s fees pursuant to Ark. Code Ann. § 4-88-204.

79. At all relevant times, the Arkansas Deceptive Trade Practices Act, codified at Ark. Code Ann. § 4-88-107(a) (“ADTPA”) provides that it is unlawful to:

- Knowingly taking advantage of a consumer who is reasonably unable to protect his or her interest because of:
 - (1) Physical infirmity;
 - (2) A similar factor;
- Engaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade.

- Knowing making a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style or model.

80. Further, 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.

81. The conduct of Defendants as described herein constitutes a deceptive practice in violation of the ADTPA. Defendants violated the Protection of Long Term Care Facilities Residents' Act which is a per se violation of the ADTPA. Defendants violated the Protection of Long Term Care Facilities Residents' Act which is a per se violation of the ADTPA. Additionally, Defendants failed to inform Plaintiffs and the Plaintiff Class in Defendants' standard admission agreement that the Facilities routinely failed to meet minimum staffing requirements imposed by state and federal law which increased profits. Furthermore, Defendants represented themselves as providing services commensurate with the needs of the Residents and in compliance with the requirements of Arkansas state law governing long-term care and nursing facilities.

82. By understaffing the Facilities, the Defendants knowingly took advantage of the most vulnerable consumers and those who were unable to protect themselves. Defendants' unfair and deceptive trade practices asserted herein are the type that the ADTPA is specifically designed to protect against and remedy.

83. The Defendants' trade practices also are, and have been throughout the Class Period unconscionable, because the nursing home residents constitute a vulnerable population:

they are disabled, elderly, infirm, and often deteriorating. These residents often face the double burden of dependency and isolation. The Defendants advertise for and accept these vulnerable residents for admission, and then knowingly fail to provide sufficient levels of staffing to provide the care required. Moreover, Defendants conceal and fail to disclose to Residents and their families ongoing violations of Staffing Laws Based on Resident's Needs and State Minimum Staffing Ratio Laws.

84. The Defendants also engaged in, and have engaged in throughout the Class Period, substantively unconscionable trade practices by understaffing the Facilities making it impossible to provide adequate care to residents even though it routinely documented in Residents' medical records, services it could not and did not provide.

85. The Defendants knew that they were not meeting, and did not have sufficient staff to meet the Basic Care needs of their residents as mandated by state and federal laws and regulations. The Defendants were indifferent to the consequences to the elderly and disabled resident population when intentionally violating state and federal staffing laws to increase profits.

86. The Defendants further engaged in deceptive trade practices by infringing upon and depriving the Plaintiff Class of the rights guaranteed by Ark. Code Ann. § 20-10-1201, et seq. ("Protection of Long Term Care Facilities Residents' Act") 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 the Plaintiff Class, with established and recognized practice standards within the community, and with rules as adopted by federal and state agencies:

- (b) The right to appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff;
- (c) 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;
- (d) The right to facilities with premises and equipment, and conduct of its operations maintained in a safe and sanitary manner;
- (e) The right to be free from mental and physical abuse, and from physical and chemical restraints;
- (f) The right to the obligation of the facilities to keep full records of the admissions and discharges of the Plaintiff Class and their medical and general health status, including:
 - (i) medical records;
 - (ii) personal and social history;
 - (iii) individual resident care plans, including, but not limited to, prescribed services, service frequency and duration, and service goals;
 - (iv) making it a criminal offense to fraudulently alter, deface, or falsify and medical or other long-term care Facilities record, or cause or procure any of these offenses to be committed; and
 - (v) The right to be treated courteously, fairly, and with the fullest measure of dignity.

87. The Defendants' conduct, as described herein, constitutes a violation of public policy and a deceptive practice in violation of the Arkansas Deceptive Trade Practices Act. The Defendants engaged in unconscionable, false, and/or deceptive acts or practices in business, commerce and/or trade including, but not limited to, marketing themselves and holding themselves out to the public as complying on an ongoing basis with health and safety laws. Not only did Defendants represent to the public and Class Members that they could and would meet the needs of elderly and disabled residents of the Facilities during the Class Period when they

were aware that the Facilities could not meet Residents' needs, they profited from their wrongful and deceptive practices.

88. As a direct and proximate result of the Defendants' wrongful, willful and wanton conduct, Plaintiffs are entitled to and plead, in accordance with Ark. R. Civ. Pro. 8(a), that they have suffered actual damages, including economic damages, compensatory damages and loss of dignity damages in an amount greater than that necessary to establish federal court jurisdiction in diversity of citizenship cases.

COUNT II:
BREACH OF THE ADMISSION AGREEMENT
BETWEEN RESIDENTS & DEFENDANTS

89. Plaintiffs incorporate the allegations contained in paragraphs 1–88 as if fully set forth herein.

90. Before being admitted to the Facilities, Residents, or those acting on their behalf, were required to enter into a Resident Admission Agreement, whereby the Facilities agreed to provide nursing and custodial care, necessary goods, services, and/or treatment in exchange for valuable consideration. See **Exhibit 33**.

91. The Residents, or those acting on their behalf, paid for or caused to be paid for, the goods, services, care and treatment, including personal or custodial care, and professional nursing care the Defendants promised to provide.

92. The Defendants breached their contractual duties, both express and implied, by understaffing the Facilities and creating a situation whereby it was impossible for caregivers to provide the care and services as described in the agreement, causing damage to the residents, including loss of dignity.

93. As a result, Plaintiffs are entitled to and plead, in accordance with Ark. R. Civ. Pro. 8(a), that they have suffered compensatory damages in an amount greater than that necessary to establish federal court jurisdiction in diversity of citizenship cases, and Plaintiffs assert 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.

94. Plaintiffs are entitled to seek punitive damages for breach of contract, because the Defendants knew or should have known, in the light of the surrounding circumstances, that their nonfeasance in breach of the Admission Agreement would naturally and probably result in injury or damage, yet the Defendants breached the agreement in reckless disregard of the consequences from which malice may be inferred.

95. The Plaintiffs are entitled to attorney's fees pursuant to Ark. Code Ann. § 16-22-308.

COUNT III:
BREACH OF THE PROVIDER AGREEMENT

96. Plaintiffs incorporate the allegations contained in paragraphs 1–95 as if fully set forth herein.

97. Upon becoming a resident of the Facilities, the Residents, many of whom were Medicare and/or Medicaid recipients, became third-party beneficiaries of the Contract to participate in the Arkansas Nursing Home Program (Provider Agreement) between Defendants and the state and federal governments, an example of which is attached as **Exhibit 34**.

98. For consideration paid by the Residents or on their behalf, the 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. In addition, by entering into the agreement, the 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.”** [emphasis added] The Defendants further agreed that “the rights and privileges of the Residents [were] of primary concern to the parties” and promised 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.” See **Exhibit 34**. Additionally the Adams Brothers Homes promised in their Provider Agreements **“to accept only residents** who have met the requirements of the duly promulgated Pre-Admission Screening Program and **for whom the facility can provide all required and necessary services.”** [emphasis added]

99. As the name implies, the provider agreement exists to pay for and provide for resident, personal, or custodial care and professional nursing care. Additionally, the provider agreement between the Defendants and the state and federal government was clearly intended to benefit and protect the Residents of the Adams Brothers’ Facilities by requiring Defendants to provide quality care consistent with federal and state statutes and regulations.

100. Defendants breached the provider agreement and committed multiple acts of nonfeasance in failing to adequately staff the Facilities and provide the care, goods, and services to industry standards, as required by law and as agreed, including but not limited to the following:

- (a) Failing to staff the Facilities with sufficient personnel to adequately meet the needs of the Residents, failing to comply with rules and regulations

promulgated by the state and federal governments, and in failing to provide staff qualified to meet the needs of Residents;

- (b) Failing to provide personal or custodial services and nursing care as required by law;
- (c) Failing to implement policies and procedures so as to prevent infringement or deprivation of the resident's rights as Residents of a long-term care facility; and
- (d) Failing to comply with protections, duties, and obligations imposed by applicable state and federal statutes and regulations as alleged herein.

101. As a result of Defendants' breach of the provider agreement, Plaintiffs assert 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, in accordance with Ark. R. Civ. Pro. 8(a), that exceeds that required for federal court jurisdiction in diversity of citizenship cases.

102. Defendants are also liable for all consequential damages because Defendants knew, or should have known, that breaches of the provider agreements would result in consequential damages to the Residents and, under the circumstances, the Defendants should have understood that they had agreed to assume responsibility for any consequential damages caused by their breach of the provider agreements.

103. Plaintiffs seek judgment for all foreseeable consequential damages which flowed naturally from the failure of Defendants to provide the care, goods and services promised under the provider agreement, including, but not limited to, medical expenses, pain and suffering, mental anguish, and loss of dignity.

104. Plaintiffs are entitled to seek punitive damages for breach of contract because Defendants knew or ought to have known in 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 Defendants breached the agreement in reckless disregard of the consequences from which malice may be inferred.

COUNT IV:
UNJUST ENRICHMENT

105. Plaintiff incorporates the allegations contained in paragraphs 1–104 as if fully set forth herein.

106. Plaintiffs claim that the Adams Brothers Homes have been unjustly enriched to Plaintiffs' detriment.

107. Residents, or someone on behalf of residents, paid Defendants money with the expectation that they would receive the care and treatment and services promised to them in Defendants' Admissions Agreement, and Defendants received a benefit from the money paid by residents.

108. The circumstances between the parties were such that Plaintiffs reasonably expected to receive services equal to that promised to them, which, at a minimum, were equal in value to the money paid Defendants.

109. Defendants were aware that their residents or someone on behalf of the residents were paying Defendants with the expectation that said residents would receive care, services and treatment at a value at least equal to the amount of money the Defendants were paid to provide such care, services and treatment.

110. Defendants failed to live up to their end of the bargain. In breach of the contracts identified above and in violation of the Residents' Rights Act, Arkansas Deceptive Trade Practices Act, and other state and federal laws, the Defendants were paid to provide basic care services to residents of the Facilities which said Defendants did not provide due to their ongoing practices of understaffing.

111. Accordingly, Defendants would be unjustly enriched if allowed to retain the money paid them by residents and those acting on behalf of residents for care, treatment and services that Defendants failed to deliver. Defendants should not be permitted to unjustly enrich themselves at the expense of the Residents. Equity and good conscience require the Defendants to make restitution for all funds received in violation of state and federal laws and regulations.

112. Plaintiffs plead in accordance with Ark. R. Civ. Pro. 8(a) that they are entitled to restitution in an amount greater than that necessary to establish federal court jurisdiction in diversity of citizenship cases, and Plaintiffs assert a claim for judgment for all compensatory damages including the amount a jury determines is sufficient compensation Defendants' unjust enrichment.

DEMAND FOR JURY TRIAL

113. Plaintiffs and the Plaintiff Class demand trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs and the Plaintiff Class pray for the following relief:

(a) For certification of a class of Residents consisting of all Residents of the Adams Brothers' Homes between April 1, 2014 and July 31, 2017.

(b) For damages, including economic, compensatory, mental anguish and loss of dignity, in an amount adequate to compensate the Plaintiffs for the injuries and damages sustained.

(c) For all actual, general and special damages caused by the alleged conduct of Defendants.

(d) For the costs of litigating this case.

(e) For attorney's fees pursuant to Ark. Code. Ann. § 16-22-308 and Ark. Code Ann. § 4-88-201 and 113(f).

(f) For punitive damages sufficient to punish Defendants for their egregious and malicious misconduct in reckless disregard and conscious indifference to the consequences the residents and to deter Defendants and others from repeating such atrocities.

(g) Enjoining the Defendants from: (i) understaffing the Facilities; (ii) accepting residents at a time the Facilities are understaffed; (iii) accepting payments from any source, including Medicare and Medicaid, at any time in which the Facilities are not in full compliance with all state and federal laws and regulations; and (iv) billing for services not provided.

(h) For judgment against all Defendants for actual damages, compensatory damages and punitive damages.

(i) Attorney's fees and all costs incurred in the prosecution of this action and for all other appropriate relief.

(j) For all other relief to which Plaintiffs are entitled.

Respectfully submitted,

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