

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

UNION COUNTY

SANDRA PETERSON, as Administratrix of
the Estate of JANIE WINCHESTER, deceased,

Plaintiff,

v.

EVEREST LONG TERM CARE, LLC D/B/A
LAKE PARK NURSING AND REHABILITATION
CENTER; PRINCIPLE IT SERVICES, INC;
PRINCIPLE LONG TERM CARE, INC.;
MAPLE LTC GROUP, LLC; KARE MEDICAL, INC.;
NEIL MEDICAL GROUP, INC.; HILLCO LTD.; and
KIMBERLY L. SNYDER, ADMINISTRATOR

Defendants.

COMPLAINT
(Jury Trial Demanded)

COMES NOW SANDRA PETERSON, as Administratrix of the Estate of JANIE WINCHESTER deceased (hereinafter, "Plaintiff"), and files this Complaint against Defendants Everest Long Term Care, LLC d/b/a Lake Park Nursing and Rehabilitation Center, Principle IT Services, Inc., Principle Long Term Care, Inc., Maple LTC Group, LLC, KARE Medical, Inc., Neil Medical Group, Inc., Hillco Ltd. and Kimberly L. Snyder, Administrator, and alleges as follows:

PARTIES

1. Plaintiff's Decedent, JANIE WINCHESTER died on October 15, 2015 while a resident of North Carolina. Her niece, Sandra Peterson, has been duly appointed as the Administratrix of the Estate of Janie Winchester by the Superior Court of Union County, North Carolina (file no. 15E980), and is acting as such in the institution of this action. This action was

instituted within three years of the date of negligence and within two years from the date of death of Janie Winchester.

2. Defendant **Everest Long Term Care, LLC d/b/a Lake Park Nursing and Rehabilitation Center** (“Lake Park”) is a North Carolina corporation which at times relevant hereto did business in North Carolina as a skilled nursing facility known as Lake Park Nursing and Rehabilitation Center located at 3315 Faith Church Road, Indian Trail, North Carolina, 28079. Everest Long Term Care, LLC can be served through its registered agent, Erik Lindberg, 223 Hwy 70 East, Suite 110, P.O. Box 1010, Garner, North Carolina 27529.

3. Defendant **Principle IT Services, Inc.** (“Principle IT”) is a North Carolina company which at times relevant hereto did business in North Carolina as a provider and/or manager of nursing services to residents in skilled nursing facilities. Principle IT owns, operates and/or manages a skilled care nursing facility under the assumed name of Lake Park Nursing and Rehabilitation located at 3315 Faith Church Road, Indian Trail, North Carolina, 28079. Principle IT Services, Inc. can be served through its registered agent, Erik Lindberg, 223 Hwy 70 East, Suite 110, Garner, North Carolina 27529.

4. Defendant **Principle Long Term Care, Inc.** (“Principle”) is a North Carolina company which at times relevant hereto did business in North Carolina as a provider and/or manager of nursing services to residents in skilled nursing facilities. Principle owns, operates and/or manages a skilled care nursing facility under the assumed name of Lake Park Nursing and Rehabilitation Center located at 3315 Faith Church Road, Indian Trail, North Carolina, 28079. Principle Long Term Care, Inc. can be served through its registered agent, Erik Lindberg, 223 Hwy 70 East Suite 110, P.O. Box 1010, Garner, North Carolina 27529.

5. Defendant **Maple LTC Group, LLC** (“Maple LTC”) is a North Carolina

company which at times relevant hereto did business in North Carolina as a provider and/or manager of nursing services to residents in skilled nursing facilities. Maple owns, operates and/or manages a skilled care nursing facility under the assumed name of Lake Park Nursing and Rehabilitation Center located at 3315 Faith Church Road, Indian Trail, North Carolina, 28079. Maple LTC Group, Inc. can be served through its registered agent, Erik Lindberg, 223 Hwy 70 East Suite 110, P.O. Box 1010, Garner, North Carolina 27529.

6. Defendant **KARE Medical, Inc.** ("KARE") is a North Carolina company which at times relevant hereto did business in North Carolina as a provider and/or manager of nursing services to residents in skilled nursing facilities. KARE owns, operates and/or manages a skilled care nursing facility under the assumed name of Lake Park Nursing and Rehabilitation Center located at 3315 Faith Church Road, Indian Trail, North Carolina, 28079. KARE Medical can be served through its registered agent, Randy Uzzell or current Registered Agent for Service of Process, at 1435 Hwy 258 North, Kinston, North Carolina 28501.

7. Defendant **Neil Medical Group, Inc.** is a North Carolina company which at times relevant hereto did business in North Carolina as a provider and/or manager of nursing services to residents in skilled nursing facilities. Neil Medical Group, Inc. owns, operations and/or manages a skilled care nursing facility under the assumed name of Lake Park Nursing and Rehabilitation Center located at 3315 Faith Church Road, Indian Trail, North Carolina, 28079. Neil Medical Group, Inc. can be served through its registered agent, Erik P. Lindberg, at 223 Hwy 70 E, P.O. Box 1010, Garner, North Carolina 27529.

8. Defendant **Hillco, Ltd.** ("Hillco") is a North Carolina company which at time relevant hereto did business in North Carolina as a provider and/or manager of nursing services to residents in skilled nursing facilities. Hillco owns, operates, and/or manages a skill care

nursing facility under the assumed name of Lake Park Nursing and Rehabilitation Center located at 3315 Faith Church Road, Indian Trail, North Carolina, 28079. Hillco, Ltd. can be served through its registered agent, Erik P. Lindberg, at 223 Hwy 70 East, P.O. Box 1010, Garner, North Carolina 27529.

9. Defendant **Kimberly L. Snyder** (“Snyder”) is an individual who was, at times relevant to this case, residing in North Carolina and a Licensed Nursing Facility Administrator (LNFA) at Lake Park Nursing and Rehabilitation Center located at 3315 Faith Church Road, Indian Trail, North Carolina, 28079. Kimberly Snyder can be served at 6007 Red Maple Drive, Charlotte, North Carolina, 28277.

10. Defendant **Everest Long Term Care, LLC d/b/a Lake Park Nursing and Rehabilitation Center** (“Lake Park”) was, at all times relevant to the events set forth herein, licensed by the North Carolina Department of Health and Human Resources, Division of Facilities Services, to operate **Lake Park Nursing and Rehabilitation Center** under North Carolina license number NH0592.

11. At times relevant to this complaint, Defendants Everest Long Term Care, LLC, Principle IT Services, Inc., Principle Long Term Care, Inc., Maple TLC Group, LLC, KARE Medical, Neil Medical Group, Inc. and Hillco, Ltd. (hereinafter referred to as “Corporate Defendants”) had a duty to establish and implement policies regarding the management and operation of the facility known as Lake Park.

12. At times relevant to this complaint, Corporate Defendants, by and through their employees and/or agents, had the responsibility to perform their duties with the care that an ordinarily prudent in a like position would exercise under similar circumstance.

13. At all times relevant to this complaint, the Corporate Defendants had actual knowledge concerning the working conditions at Lake Park and other facilities, including actual knowledge regarding understaffing problems, actual knowledge regarding the poorly qualified, overworked, underpaid, poorly trained, and incompetent staff rendering care to the elderly at their long term care facilities, including but not limited to Lake Park.

JURISDICTION

14. This Court has jurisdiction over this cause of action and personal jurisdiction over the Defendants under N.C. Gen. Stat. §§1-75.4(1), 7A-240, and/or 7A-243

COMPLIANCE AND OBJECTIONS TO NORTH CAROLINA LEGAL REQUIREMENTS

15. Plaintiff, through the undersigned counsel, objects to the requirement that she comply with Rule 9(j) of the North Carolina Rules of Civil Procedure on the grounds that Rule 9(j) is an unconstitutional violation of the following: (a) Amendment VII and Amendment XIV of the United States Constitution; (b) Article I, Sections 18, 19 and 25 of the North Carolina Constitution. Furthermore, even if Rule 9(j) is not unconstitutional, a Rule 9(j) certification is not required in this case pursuant to *Lewis v. Setty*, 130 N.C. App. 606, 503 S.E.2d 673 (1998), *appeal after remand*, 140 N.C. App. 536, 537 S.E.2d 505 (2000), and *Taylor v. Vencor, Inc.*, 136 N.C. App. 528, 525 S.E.2d 201 (2000). Therefore, plaintiff objects to having to comply with the requirements of Rule 9(j) in filing this Complaint.

16. Without waiving this objection, plaintiff states that the medical care, and all medical records pertaining to the alleged negligence that are available to the Plaintiff after reasonable inquiry, have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of the North Carolina Rules of Evidence, and who has the opinion that the care provided by agents, servants, and/or employees of defendants fell

below the applicable standard of care and is willing to testify as such.

OBJECTION TO N.C.G.S. §90-21.19

17. Plaintiff objects to N.C.G.S §90-21.19 (cap on non-economic damages) as unconstitutional. The cap on noneconomic damages denies plaintiffs, including Plaintiff herein, the right to a jury trial, due process of law, equal protection under the law, and the right to open courts, violates the separation of powers, and confers an exclusive emolument on health care providers in violation of the United States and North Carolina Constitutions. The cap on non-economic damages violates the Seventh and Fourteenth Amendments of the United States Constitution and Article IV, §§1 and 13 of the North Carolina Constitution.

BACKGROUND

A. Summary Statement of the Case:

18. Janie Winchester was a resident of Lake Park from December 19, 2014 until October 15, 2015. Janie Winchester was looking to Defendants for treatment of her total needs for custodial, nursing, and medical care and not merely as the situs where others not associated with the facility would treat her. Ms. Winchester was an elderly, disabled, and dependent individual, who occupied a Medicare and/or Medicaid certified bed in a nursing facility licensed by the state of North Carolina.

19. Janie Winchester was admitted by Defendants into Lake Park Nursing and Rehabilitation Center to be treated and cared for there in exchange for certain payments. It was well known to Defendants that Ms. Winchester was dependent for her basic needs, treatment, and care.

20. At times material to Plaintiff's claims, Ms. Winchester suffered from dementia and she was placed in the Specialized Programming for Alzheimer's and Related Kare (SPARK)

locked-down dementia unit. As a nursing home resident, she was entitled to and had the right to receive the basic and minimum care prescribed by law and to be protected from harm by the agents and employees of Lake Park.

21. During Janie Winchester's residency at Lake Park, Defendants engaged in a continuing course of conduct, repeatedly and successively neglecting Ms. Winchester by violating on an ongoing and persistent basis her most basic needs, protection, dignity and minimum care. As described in more detail below, Defendants' repetitive neglect and wanton conduct caused Ms. Winchester to suffer injury, including: a) unplanned significant weight loss; b) dehydration, several episodes requiring IVF rehydration; c) multiple falls with traumatic and painful injuries; d) frequent infections; e) sexual assault; f) physical and mental decline; and, g) an untimely death.

B. Defendants' Basic Responsibilities

22. By reason of Ms. Winchester's medical diagnosis, physical infirmities, disability, and level of dependence, Defendants were required to provide that minimum care specified below at Lake Park:

- (a) Hygiene care, incontinent care, bathing, and cleaning on a routine basis sufficient to ensure the ongoing protection of Janie Winchester's dignity and integrity and prevent infection;
- (b) Ordered feedings and sufficient nutrition to ensure that Janie Winchester maintained her body weight and protein stores and did not suffer from unplanned weight loss; and
- (c) Timely and appropriate comprehensive care plan specific to Janie Winchester which identified specific care measures necessary to meet her care needs, which was modified as necessary, monitored for effectiveness, and implemented.

23. By reason of Janie Winchester's minimum needs and by virtue of the license and contracts governing the care owed to residents of nursing homes, at all material times,

Defendants were under a continuing duty to provide sufficient numbers of competent and trained staffing, including nurse aides, on a 24-hour basis to provide nursing care to residents including Janie Winchester, in accordance with their respective care plans.

24. Moreover, Corporate Defendants had a duty to respectively allocate resources and exercise fiscal policies with reasonable care, so as to prevent the infliction of harm on residents of the nursing home.

C. Corporate Defendants' Decision to Understaff Lake Park:

25. At times material hereto, Corporate Defendants were fully aware that the failure to provide sufficient numbers of competent nursing personnel to meet the basic needs of residents jeopardized the health and safety of such residents and would, in all reasonable likelihood, cause serious injury and death to Ms. Winchester.

26. At material times hereto, Corporate Defendants were fully aware that the delivery of essential care and custodial services to residents in the nursing home, including Ms. Winchester, hinged upon: a) the determination of the numbers and expenditure on staffing levels in the nursing home; b) the determination of census levels within the nursing home; and c) the determination of the census mix which, in turn, established the amount of revenue and impacted the acuity levels of the resident population, and therefore, the nursing home's ability to meet the acuity levels and needs of the residents.

27. Despite this knowledge, Corporate Defendants made budgetary and administrative decisions that had a devastating effect on the ability of the nursing home to provide safe, adequate, and essential care to the residents, including Ms. Winchester.

28. Corporate Defendants' decisions and directives as to staffing and census were determined by the financial needs and goals of the Corporate Defendants, not the custodial,

medical, and nursing needs of the residents of the facility, including Ms. Winchester.

29. Corporate Defendants entered into a continuing course of negligent conduct, creating, implementing, and enforcing dangerous operational budgets at the nursing home which deprived residents, including Ms. Winchester, of adequate staffing necessary to meet her custodial needs, including appropriate fluid intake, sufficient nutritional intake to prevent unplanned weight loss, supervision and assistive devices to minimize falls and enhance resident safety, and proper care to prevent infection. This course deprived residents, including Ms. Winchester, of supplies necessary to meet her needs. Moreover, this course failed to ensure that qualified employees worked in the nursing home. This allowed a sexual predator to work in the nursing home and to cause harm to residents.

D. Corporate Defendants' Decision to Aggressively Market and Recruit:

30. Notwithstanding Corporate Defendants' decisions and directives to short staff the nursing home, Corporate Defendants required Lake Park to recruit heavier-care, higher-pay residents to the facility, even though the needs of the patient population exceeded the capacity of the staff.

E. Corporate Defendants' Notice, Motive, and Routine Practices:

31. Corporate Defendants' interference, domination, intervention, and direct participation in the operations of the nursing homes in their chain, including Lake Park, were rooted in Defendants' knowledge that small changes in the resident census/occupancy of the nursing homes dramatically impacted Defendants' overall revenues.

32. Corporate 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.

33. Driven by the desire to grow revenues and increase profits, Defendants:
- (a) Tightly monitored and controlled the census/occupancy targets and levels in their nursing homes, including Lake Park, on a routine basis;
 - (b) Established, monitored, and enforced census/occupancy, staffing and labor costs targets, including those for Lake Park, on a routine basis;
 - (c) Established and enforced in each nursing home, including Lake Park, 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 nursing homes, including Lake Park, on a frequent basis.
 - (e) Mandated that each of its nursing homes, including Lake Park, as well as its operating regions and divisions, routinely report to Corporate Defendants its:
 - (1) Compliance with and variance from Corporate Defendants' census/occupancy targets and objectives;
 - (2) Compliance with and variance from Corporate Defendants' marketing and sales plans;
 - (3) Marketing and sales efforts and actions undertaken to recruit new residents; and
 - (4) Compliance and variance in staffing levels and labor costs the Corporate Defendants established and approved for the nursing homes.

33. Lake Park acted in accordance with Corporate Defendants' required census/occupancy edicts, staffing and labor cost restrictions, marketing, admission, and discharge policies and procedures by filling empty beds, recruiting high acuity residents, and maintaining dictated occupancy and staffing levels inconsistent with the needs of residents, including Ms. Winchester.

34. The control that Corporate Defendants exercised in this regard surpassed the control that is a normal incident of ownership of a subsidiary and was in disregard for the interests of the subsidiary nursing home licensee, Everest Long Term Care, and the interests of

the patients in the nursing home. Corporate Defendants' direct participation in the conduct at issue superseded the discretion and interest of its subsidiary, Everest Long Term Care, violated the law, and created the conditions leading to the acts and omissions complained of herein. The agents of Corporate Defendants who made the decisions and took the actions complained of were acting in their respective capacity as agents, officers, and/or directors of Corporate Defendants.

F. Defendants' Awareness of Sexual Assault Allegations against Douglas Steven Little:

35. Mable Pratt was a resident at Lake Park living on the SPARK unit. Upon information and belief, on or about March 2011, Mable Pratt made an outcry of sexual assault against Douglas Steven Little. The Pratt family demanded that Lake Park perform an internal investigation into Mable Pratt's allegations. Upon information and belief, Lake Park discounted Mable Pratt's outcry and responded that Douglas Steven Little was only giving Mable Pratt an enema. After various meetings between the Pratt family and nursing home management about the allegations of sexual assault against Douglas Steven Little, Defendants relocated Mable Pratt to a room next to the nurse's station and promised to remove Douglas Steven Little from the SPARK unit.

G. Defendants' Failure to Protect Janie Winchester and Other Residents from Sexual Assault:

36. Although Defendants were aware of sexual assault allegations by helpless nursing home residents on the SPARK unit against Douglas Steven Little, Defendants failed to protect Janie Winchester, and other residents on the SPARK unit, from harm caused by Douglas Steven Little. Furthermore, Defendants failed to adequately investigate Douglas Steven Little. Had they done so, they would have discovered that Douglas Steven Little had a previous warrant for felony indecent liberties with a child.

37. Upon her admission to Lake Park, Ms. Winchester was a sweet and loving mother

and grandmother. Her visitors at Lake Park included her sons-in-law and a dear male family friend. However, after a few months in Lake Park, Ms. Winchester began exhibiting signs of a sexual assault victim. Ms. Winchester's personality drastically changed from sweet and loving to aggressive and combative. Ms. Winchester became increasingly agitated and combative. With her male family and friends she became aggressive and even refused to allow a male into her room. Ms. Winchester also became aggressive toward male Lake Park staff and began refusing care from male caregivers. Ms. Winchester developed skin tears on her back and bruising on her extremities, including hand-shaped bruising.

38. When her family asked about Ms. Winchester's behavioral changes, Defendants stated that they were the natural result of dementia. Similarly, when her family asked about Ms. Winchester's bruising, Defendants stated that Ms. Winchester caused the bruising to herself.

39. Ms. Winchester's daughter and son-in-law arrived at Lake Park on October 15, 2015 and found Ms. Winchester deceased in her bed with her body cold to touch. Lake Park staff was totally unaware to her being deceased.

40. On January 6, 2016, Douglas Steven Little (identified in the January 15, 2016 survey as NA #1) was caught sexually assaulting Mary Cox, another dementia resident living on the SPARK unit. Upon information and belief, Douglas Steven Little has confessed to sexually assaulting Ms. Cox and is currently serving a prison sentence.

41. The sexual assault of Ms. Winchester and her resultant damages were proximately caused by Defendants' negligence.

H. Defendants' Failure to Protect Janie Winchester from Other Avoidable Injuries:

42. In addition to being sexually assaulted, Janie Winchester was allowed to suffer other avoidable injuries while in the custody, care and control of Defendants. More specifically,

Defendants' repetitive neglect and wanton conduct caused Ms. Winchester to suffer: a) significant weight loss; b) dehydration, several episodes requiring IVF rehydration; c) multiple falls with traumatic & painful injuries; d) frequent infections; e) physical and mental decline; and, f) an untimely death.

LEGAL BASIS FOR DEFENDANTS' LIABILITY

43. At relevant times mentioned herein, Defendants owned, operated, managed, and/or controlled Lake Park, either directly or through the agency of each other and/or other entities, agents, servants, or employees.

44. Defendants are directly or vicariously liable for any acts and omissions by any person or entity, controlled directly or indirectly, including any governing body, officer, employee, ostensible or apparent agent, consultant or independent contractor, whether in-house or outside individuals, entities, agencies, or pools, which caused injury to Janie Winchester.

45. Corporate Defendants are sued for their direct participation in the torts and causes of action made the basis of this lawsuit, having: (a) disregarded the duties and responsibilities which Lake Park, as a licensed nursing home, owed to the state of North Carolina and its residents; (b) created the dangerous conditions described by interfering with and causing Lake Park to violate state and federal statutes, laws, and/or minimum regulations governing operation of nursing homes; (c) superseding the statutory rights and duties owed to nursing home residents through its dangerous directives, policies, and control of Lake Park; and (d) caused the harm complained of herein.

46. At times relevant hereto, Defendants, their servants, agents, and/or employees held themselves out to the public and to Janie Winchester and her family members as operating and managing qualified and professional facilities having employees with special training,

experience, knowledge, and expertise in caring for people who cannot take care of themselves or make appropriate decisions for themselves. Defendants, their servants, agents, and/or employees held themselves out to be qualified and competent in all matters relating to residential care and protection of the aged and infirm, and held themselves out as having the ability to accept and properly care for patients like Janie Winchester.

47. Corporate Defendants, at times relevant herein, charged and were paid for services rendered to Janie Winchester. Upon information and belief, at times material hereto, Corporate Defendants received Medicare, Medicaid, and/or other payments for the maintenance and care of Ms. Winchester.

48. In addition to being legally responsible for the wrongful acts detailed above as a direct participant, Plaintiff pleads in the alternative that Corporate Defendants are also indirectly and vicariously liable and responsible for each and every tort and cause of action stated within this Complaint and the resultant damages. More specifically, Corporate Defendants are vicariously liable and responsible for the wrongful conduct detailed above and below under the alternative legal theories:

a) *Alter Ego*: At times material to this lawsuit, Defendants were alter egos of one another. Furthermore, Defendant Everest Long Term Care, LLC was a subsidiary and the alter ego of the other Corporate Defendants. Defendant Everest Long Term Care, LLC was a mere conduit through which the other Corporate Defendants did business and the management and operations of Everest Long Term Care, LLC were so assimilated within the other Corporate Defendants that Everest Long Term Care, LLC was simply a name through which the other Corporate Defendants conducted their business. Moreover, the Corporate Defendants represented to the public that Everest Long Term Care, LLC was part of one single economic enterprise. The

other Corporate Defendants dominated and controlled the business affairs of Everest Long Term Care, LLC such that Everest Long Term Care, LLC was organized and operated as a mere tool of the other Corporate Defendants. Assertions by the Corporate Defendants that each was a separate corporate fiction with an independent and separate existence is nothing more than a sham and part of a scheme to perpetrate fraud, promote injustice, and evade existing legal and fiduciary obligations.

b) *Agency*: At times material to this lawsuit, Corporate Defendants acted as agents for one another and ratified or authorized the acts or omissions of one or more of the other Corporate Defendants. Corporate Defendants also held themselves out as being one unified enterprise known as “Principle.”

c) *Joint Enterprise*: In the alternative, to the extent that Corporate Defendants are found to be separate corporate entities, the Corporate Defendants each remain liable for the acts and omissions of each other because the Corporate Defendants engaged in a joint venture and enterprise to act in concert in the operation, management, and maintenance of the nursing home. The Corporate Defendants agreed to a common purpose of operating, managing, and maintaining the nursing home. The Corporate Defendants had equal rights to control their venture as a whole, as well as to control the operation and management of the nursing home.

49. Furthermore, at times material hereto, both the medical professionals and custodial care provider staff at the nursing home were agents, employees and/or servants, either actual or apparent, of Corporate Defendants so that any acts or omissions on the part of the same would be attributable to and imputed to the Corporate Defendants pursuant to the doctrine of *respondeat superior* or similar theories of liability. Alternatively, both the medical professionals and the custodial care provider staff were borrowed servants of the Corporate Defendants.

50. At times material to this lawsuit, Everest Long Term Care applied for and received a state license to operate the long term care facility Lake Park and at all times material, held such license. Further, this Defendant entered into a contract with the State of North Carolina to provide nursing facility services. Such contract was in force and effect at all times material to this suit and provided a significant source of revenue to Defendants. More specifically, it obligated Defendants to provide nursing care and services in accordance with the regulatory standards found in 42 C.F.R. part 483 and 10A NCAC 13D 0.0100, *et. seq.*

51. At times material to this lawsuit, Defendant Kimberly Snyder served as the Licensed Nursing Facility Administrator (LNFA) at Lake Park Nursing and Rehabilitation Center. As a LNFA in the State of North Carolina, Defendant Snyder had the authority for and was responsible for the overall operation of the facility. Further, Snyder was responsible for: (a) ensuring patient services were provided in accordance with all applicable local, state and federal regulations and codes, and with acceptable standards of practice that apply to professionals providing such services in the facility; and, (b) developing and implementing policies for the management and operation of the facility. Furthermore, Defendant Snyder was under a continuing duty to conform her conduct to the standards and rules governing her profession and the standards of a reasonably prudent LNFA. Defendant Snyder is sued in her individual capacity for acts and omissions which she committed.

**NEGLIGENCE OF DEFENDANTS RESULTING IN
PERSONAL INJURY AND WRONGFUL DEATH**

52. Plaintiff re-alleges and incorporates all allegations hereinabove.

53. At all times material to this lawsuit, statutory and regulatory duties imposed by the State of North Carolina and designed to protect a class of persons, to wit: the nursing home residents of this State, were in full force and effect. As a member of such class, Janie Winchester

was entitled to protection of these laws, namely N.C. Gen. Stat. §§131A-1—131F-1 and the rules and regulations promulgated thereunder by the North Carolina Department of Health and Human Services as set forth in the 10A NCAC 13D.2001 *et. seq.*

54. These laws and regulations are not pled as the basis for a separate cause of action or negligence *per se* but as evidence of the Defendants' duties, the standard of care, negligence, and gross negligence.

55. Plaintiff would show this Court that the Defendants, by and through their employees and agents, violated these fundamental laws, engaging in a pattern and practice of neglect and conduct prohibited by law. More specifically, Defendants engaged in negligent conduct which included:

- (a) Failure to hire and train appropriate personnel to care for its patients, including Janie Winchester;
- (b) Ongoing retention and assignment of unfit, unqualified, and incompetent direct care staff;
- (c) Continuing failure to obtain and provide timely and appropriate medical treatment and nursing intervention to Ms. Winchester;
- (d) Repeated failure to protect Ms. Winchester from mistreatment, sexual assault, and rape;
- (e) Continuing failure to give Ms. Winchester professional services that met a professional standard of quality;
- (f) Continuing failure to make sure that nurse aides show that they have the skills to be able to care for residents;
- (g) Continuing failure to create, use, and follow policies and procedures that forbid mistreatment, neglect, and abuse of residents;
- (h) Repeated failure to keep the family and physician informed of incidents and significant changes in condition for residents, including Ms. Winchester;
- (i) Repeated failure to notify the police, the North Carolina Division of Health Services Regulation, and the North Carolina Adult Protective Services of

incidents of abuse and alleged abuse as required by law;

- (j) Repeated failure to provide Union County Sheriff's Office with complete and accurate information regarding the physical and sexual molestation of Ms. Winchester;
- (k) Repeated failure to ensure the preservation of evidence, including destruction of potential DNA evidence;
- (l) Continuing failure to establish and implement appropriate corporate budgeting policies which were consistent with the needs of residents, including Ms. Winchester, that Defendants had accepted and promised to care for in accordance with the minimum standards prescribed the North Carolina Health Service Regulation Rules and Regulations;
- (m) Continuing failure to establish and implement appropriate corporate safety, training, staffing, and fundamental nursing care policies to prevent harm to residents and avoid the known consequences of inadequate care;
- (n) Failure to provide sufficient numbers of staff to meet Ms. Winchester's fundamental care needs;
- (o) Failure to properly monitor, observe, and assess Ms. Winchester, including, but not limited to, those ongoing assessments required by law;
- (p) Failure to implement proper fall prevention measures due to Ms. Winchester's history of falls and high risk for falling;
- (q) Failure to properly monitor and supervise Ms. Winchester due to her propensity to wander;
- (r) Failure to encourage and provide additional fluids;
- (s) Failure to obtain and provide timely and appropriate medical treatment and nursing intervention to Ms. Winchester;
- (t) Failure to notify Ms. Winchester's physician of significant conditions and changes in condition;
- (u) Failure to follow physician's orders for Ms. Winchester;
- (v) Failure to observe and comply with infection control precautions and protect Ms. Winchester from infections;
- (w) Failure to provide Ms. Winchester with sufficient amounts of fluid and monitor Ms. Winchester's intake to prevent dehydration;

- (x) Failure to provide Ms. Winchester with sufficient nutrition and supplements and monitor her nutritional intake;
- (y) Failure to provide restorative care to assess, prevent and treat Ms. Winchester's physical decline;
- (z) Failure to provide a safe environment for Ms. Winchester, including protecting Ms. Winchester from sexual abuse;
- (aa) Failure to adequately assess and treat Ms. Winchester's infections;
- (bb) Failure to adequately supervise the Administrator of Lake Park;
- (cc) Failure to adequately supervise the Director of Nursing of Lake Park;
- (dd) Failure to adequately supervise nursing staff and other direct caregivers at Lake Park;
- (ee) Failure to adequately screen, evaluate and check references, perform background checks, test for competence, and use ordinary care in selecting nursing personnel, resulting in direct caregivers who were unfit to provide care to Ms. Winchester;
- (ff) Failure to address, correct, and prevent sexual abuse of residents by employees;
- (gg) Failure to establish and implement appropriate corporate budgeting policies which were consistent with the needs of Ms. Winchester, including creating, implementing, and enforcing dangerous operational budgets which deprived residents of adequate staffing, supplies, and caused widespread neglect;
- (hh) Failure to allocate sufficient financial resources thereby causing the harm to Ms. Winchester described above;
- (ii) Failure to investigate and correct known systemic breakdowns in the delivery of care at the facility to avoid the consequences and harm to Ms. Winchester; and
- (jj) Systemic failure to establish and implement appropriate corporate safety, training, staffing, and fundamental nursing care policies to prevent harm to Ms. Winchester and avoid the known consequences of inadequate care.

56. Defendants knew or should have known that these acts or omissions, some of which occurred at Lake Park and some of which occurred at higher corporate levels, posed a serious threat to the safety and welfare of residents such as Ms. Winchester.

57. Defendants' conduct was not occasional or fortuitous, but rather was the natural and predictable result of the decisions made by Corporate Defendants to maximize revenues, bonuses, and profits while at the same time reducing costs. Corporate Defendants' policies and financial decisions caused: a) the continuing retention of employees who abused residents; b) the continued and ongoing neglect and abuse of Ms. Winchester and other similarly situated residents; c) repeated dangerous levels of insufficient and unqualified staff at the facility; d) patient population needs that continuously and grossly exceeded the capacity of the limited number of care givers on duty; and e) widespread and ongoing neglect to Ms. Winchester.

58. Overall, the profound and repeated neglect which resulted in Ms. Winchester's injuries and death was the product of Defendants' high-level corporate policy and the exercise of corporate control over Lake Park.

59. Each and all of the aforementioned acts, both omissions and commissions, as well as those yet to be discovered, constitute negligence and were a direct and proximate cause of the incident made the basis of this suit and Ms. Winchester's injuries, pain, suffering, and damages.

PERSONAL INJURY DAMAGES

60. Plaintiff re-alleges and incorporates all allegations hereinabove.

61. By reason of such conduct set forth hereinabove which resulted in the personal injury of Janie Winchester, Plaintiff, in her representative capacity as the Administrator of the Estate of Janie Winchester is entitled to and therefore asserts a claim for all personal injury/survival cause of action damages, including but not limited to damages for the pain, suffering, torment, destruction of dignity, mental anguish, physical impairment, loss of enjoyment of life, disfigurement, and medical expenses, all in an amount to be determined by a jury, but in any event, an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

WRONGFUL DEATH DAMAGES

62. Plaintiff re-alleges and incorporates all allegations hereinabove.

63. By reason of such conduct set forth hereinabove which resulted in the wrongful death of Janie Winchester, Plaintiff, in her representative capacity as the Administratrix of the Estate of Janie Winchester, is entitled to and therefore asserts a claim for all damages which the Estate may be justly entitled under NC Gen. Stat. §28A-18-2, including but not limited to: (1) expenses for care, treatment and hospitalization incident to the injury resulting in death; (2) compensation for pain and suffering of the decedent; (3) reasonable funeral expenses of the decedent; (4) present monetary value of the decedent, including but not limited to compensation for the loss of the reasonably expected society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered.

COMMON LAW FRAUD

64. Plaintiff re-alleges and incorporates all allegations hereinabove.

65. Additionally, Plaintiff has reason to believe that Defendants intentionally engaged in common law fraud which was a proximate cause of the injuries, death and damages described herein. Defendants, while claiming or implying special knowledge, concealed and/or misrepresented material facts to Janie Winchester or her representatives. The relationship between Defendants and Janie Winchester and her representative was one of trust and confidence, and Defendants had a higher duty to affirmatively speak the truth to Janie Winchester and her representative because of Janie Winchester's infirmities. Defendants' fraudulent conduct includes, but is not limited to, the conduct described and set forth below.

66. Plaintiffs believe that Defendants engaged in fraud by concealing or failing to disclose material facts within Defendants' knowledge, when Defendants knew that Janie

Winchester was ignorant of these material facts and did not have an equal opportunity to discover the truth. Further, Defendants intended to induce Janie Winchester and her family to take some action: to-wit, to not remove Janie Winchester from Lake Park, by concealing or failing to disclose the material facts that there was an epidemic of patient harm, injury, dehydration, and infections, as well as a practice of utilizing insufficient numbers of qualified nurse aides who were not adequately trained to render care in accordance with the law. Furthermore, Defendants concealed the fact that as a routine and general business practice, nurse aides were not minimally trained, educated or supervised to provide at least the following basic care services:

- a. Personal hygiene;
- b. Toileting;
- c. Dressing;
- d. Transferring;
- e. Proper fall prevention measures for patients with a history of and at high risk for falls;
- f. Proper supervision and monitoring of patients with wandering and elopement tendencies;
- g. Supervision and monitoring of patients who needed fluid intake and output monitored;
- h. Encourage and provide additional fluids to patients with increased fluid needs and in accordance with any fluid program;
- i. Proper infection control procedures to prevent infections and sepsis in patients;
- j. Care in accordance with professional standards such that patients were free from sexual abuse and inappropriate touching; and
- k. Care in accordance with the health care plans.

67. As a proximate cause of the concealment and failure to disclose, Janie Winchester suffered injury.

68. Defendants engaged in fraud by making material misrepresentations with either knowledge of their falsity or made it recklessly, without any knowledge of its truth and as a positive assertion and with intention that such misrepresentation should be acted upon by Janie Winchester and/or her responsible party. As a consequence, and as a proximate cause of the reliance on these misrepresentations, Janie Winchester suffered injury.

69. Defendants entered into an agreement with Janie Winchester wherein Defendants promised to provide basic care for Janie Winchester. As partial consideration for this promise, Janie Winchester agreed to turn over virtually all of her income to Defendants on a monthly basis. At the time of this agreement, it was known and understood by all parties that Defendants, for good and sufficient consideration, had also entered into agreements with the State of North Carolina and the United States which were designed and intended to be for the benefit and protection of Janie Winchester and others similarly situated. By virtue of these agreements and by direct statement, Defendants represented to Janie Winchester and her family that the care they would provide for her would fully comply with the licensing requirements and standards of care specified by the laws and regulations of the State of North Carolina and the United States.

70. At times material to this lawsuit, Janie Winchester occupied the status of a Medicaid recipient. Further, at times material, Lake Park occupied the status of a certified nursing facility, which by reason of its certification and promises made to the State of North Carolina and United States, was entitled to receive Medicaid and Medicare payments for care provided to qualified recipients at the facility such as Janie Winchester. The Medicaid payments to Defendants for Janie Winchester were conditioned upon Defendants certification and/or attestation that the care specified

in the provider agreement and regulations incorporated therein, between Lake Park and the State of North Carolina and between said facility and the United States, was in fact provided to Janie Winchester.

71. Lake Park held itself out to Plaintiffs and the public at large to be a licensed nursing home by the State of North Carolina and certified by both the federal and state government to provide care to nursing home residents.

72. Defendants represented to Janie Winchester that Lake Park was able to provide for Janie Winchester's skilled needs. Such representations were material and made with the intent that Janie Winchester and her family rely upon the same. They were, in fact, relied upon by Janie Winchester and her family. Defendants were fully aware at the time such promises and representations were made that Lake Park could not provide the essential care required by Janie Winchester. Defendants' promises regarding the provisions of essential care services were therefore made with the present intent not to perform the same.

73. More importantly, Plaintiffs have reason to believe that Defendants took affirmative steps to conceal their fraudulent conduct by manipulating and/or falsifying Janie Winchester's medical records in an attempt to make it appear that Janie Winchester's minimum care needs were met at Lake Park.

74. By reason of such conduct, Plaintiffs are entitled and therefore assert a claim for compensatory and punitive damages in an amount sufficient to punish and deter Corporate Defendants and others like them from such conduct in the future.

BREACH OF FIDUCIARY DUTY

75. Plaintiff re-alleges and incorporates all allegations hereinabove.

76. As a resident of Lake Park, Janie Winchester was particularly dependent for her daily care and well-being upon the Defendants, as well as their employees and agents.

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

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

79. Defendants breached their fiduciary duty and duty of full faith and fair dealing to Janie Winchester and Plaintiff by failing to provide the appropriate level of care and services to which Janie Winchester was entitled, by accepting payment for services and care not provided to Janie Winchester, and by their concealment of and failure to disclose abuse and neglect of Janie Winchester and to other residents.

80. As a proximate cause of the foregoing breaches of duty by Defendants, Janie Winchester and other residents suffered injuries.

81. Based on such conduct of Defendants as set out above, Plaintiffs assert a claim for judgment for all compensatory and punitive damages against Defendants. Plaintiffs also seek the imposition of a constructed trust on all wrongful profits and proceeds arising out of Defendants breach of fiduciary duty to Janie Winchester.

**INJURIES, DAMAGES, AND DEATH CAUSED BY
WILLFUL AND WANTON CONDUCT OF DEFENDANTS EVEREST LONG TERM
CARE, LLC d/b/a LAKE PARK NURSING AND REHABILITATION CENTER;
PRINCIPLE IT SERVICES, INC; PRINCIPLE LONG TERM CARE, INC.; MAPLE
LTC GROUP, LLC; KARE MEDICAL, INC.; NEIL MEDICAL GROUP, INC.; AND
HILLCO LTD.**

82. Plaintiff re-alleges and incorporates the allegations hereinabove.

83. This is a claim for punitive damages based on Defendants' willful and wanton conduct.

84. For the reasons set forth in the preceding counts, Defendants are liable to Plaintiff for compensatory and punitive damages.

85. The conduct described herein was undertaken by Defendants in conscious and intentional disregard of and indifference to the rights and safety of residents entrusted to their care, including Ms. Winchester. Additionally:

- (a) Prior to and during her residency at the nursing home, Defendants knew that Ms. Winchester was dependent on others for her basic needs, treatment and care;
- (b) Defendants' conduct causing the continuing neglect of Ms. Winchester during her residency at the nursing home rendered her even more helpless and dependent on others than he had been at the time of her admission to the facility;
- (c) At all material times, Defendants had the duty and the authority to act to prevent the harm and neglect caused to Ms. Winchester;
- (d) Defendants knew or should have known that the conduct described herein was reasonably likely to result in injury, damage, or other harm to residents of the nursing home, and they had multiple opportunities to intervene and act to prevent the harm suffered by residents of the nursing home, including Ms. Winchester;
- (e) Notwithstanding the repeated notice of the reasonable likelihood of harm to residents, including Ms. Winchester, Defendants failed to act to prevent such harm; and
- (f) Defendants' needless failure to act constituted a knowing, purposeful, and deliberate violation of their duties to Ms. Winchester.

86. Defendants participated in and/or condoned the fraud described above, as well as the conscious and intentional disregard of and indifference to the rights and safety of residents entrusted to the care of the nursing home, including Ms. Winchester.

87. As a result of such willful and wanton conduct by Defendants, Janie Winchester suffered the injuries, damages, and death alleged above.

INDEPENDENT NEGLIGENCE OF KIMBERLY SNYDER

88. Plaintiff re-alleges and incorporates the allegations hereinabove.

89. Plaintiff would show that Defendant Kimberly Snyder negligently failed to conform to the minimum standards of care of a reasonably prudent Administrator as required by the State of North Carolina. One or more of Defendant Kimberly Snyder's failures to conform her conduct to that of a reasonable and prudent Administrator amounted to negligence and was a proximate cause of the incident made the basis of this suit and Ms. Winchester's injuries, pain, suffering, and damages.

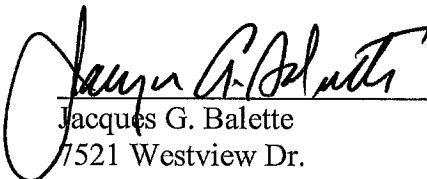
PLAINTIFF RESPECTFULLY DEMANDS A TRIAL BY JURY
ON ALL ISSUES SO TRIABLE

WHEREFORE, plaintiff prays that she have and recover of Defendants, as follows:

1. Compensatory damages for the personal injuries suffered by Janie Winchester;
2. All damages allowed by means of the wrongful death of Janie Winchester;
3. Recovery from defendant for the above damages as compensation in the lump sum in excess of Twenty-Five Thousand Dollars (\$25,000.00);
4. Punitive damages;
5. The costs of this action;
6. Interest as provided by law; and,
7. Such other further relief as the Court deems equitable, just and proper.

Respectfully submitted,

MARKS, BALETTE, GIESSEL & YOUNG, P.L.L.C

A handwritten signature in black ink, appearing to read "Jacques G. Balette", is written over a horizontal line.

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