

IN THE CIRCUIT COURT OF SCOTT COUNTY MISSOURI

KEITH KINDER)
Individually as a biological child of)
decedent Nancy Kinder on his claim)
for wrongful death, and as Personal)
Representative of the Estate of)
Nancy Kinder, Deceased,)
)
Plaintiffs,)

Cause No.:

Division:

vs.)

**HUNTER ACRES CARING)
CENTER, INC.**)
Serve: Clifton L. Shirrell)
731 North Main Street)
Sikeston MO 63801)

and)

**CIRCLE B ENTERPRISE HOLDING)
COMPANY, INC.**)
Serve: Clifton L. Shirrell)
731 North Main Street)
Sikeston MO 63801)

and)

**WRONGFUL DEATH)
NEGLIGENT HIRING/RETENTION)
NEGLIGENTSUPERVISION)
AND TRAINING)
SECTION 198 – NURSING HOME ABUSE)
EXEMPLARY/PUNITIVE DAMAGES)**

**HEARTLAND PERSONNEL)
LEASING, INC.**)
Serve: Clifton L. Shirrell)
731 North Main Street)
Sikeston MO 63801)

and)

CEO FINANCIAL SERVICES, INC.)
Serve: Clifton L. Shirrell)
731 North Main Street)
Sikeston MO 63801)

and)

**HUNTER DEVELOPMENT)
PROPERTIES, LLC.**)
Serve: Lonnie Hasty)
731 North Main Street)
Sikeston MO 63801)

and)

**THE DCB REAL ESTATE)
PARTNERSHIP d/b/a CASTLE)
PARTNERS)**

Serve: Donald B. Bedell)
731 North Main Street)
Sikeston MO 63801)

and)

**OPS, LLC, d/b/a LTC CONSULTING)
GROUP)**

Serve: Lonnie Hasty)
731 North Main Street)
Sikeston MO 63801)

and)

**NCS SERVICE, LLC d/b/a SUPERIOR)
NURSING SOLUTIONS)**

Serve: Lonnie Hasty)
731 North Main Street)
Sikeston MO 63801)

and)

**MAVERICK CONSULTING GROUP)
LLC)**

Serve: Timothy E. Kastner)
600 Washington Street)
Suite 2500)
St. Louis MO 63101)

and)

DONALD B. BEDELL)

Serve: 123 Greenbriar Drive)
Sikeston, MO 63801)

and)

WILLIAM C. MITCHELL)

Serve: 101 Wickerwood Drive)
Sikeston, MO 63801-4817)

and)

LONNIE G. HASTY)

Serve: 3701 Old Hopper Road)
Cape Girardeau,)
MO 63701)

and)

CLIFTON L. SHIRRELL)
Serve: 1204 Fairfield)
Sikeston, MO 63801-5014)
Defendants.)

PETITION

COMES NOW Plaintiff Keith Kinder individually and in his official capacity as Personal Representative of the Estate of Nancy Kinder, by and through their attorney, David W. Terry of the Terry Law Firm, L.L.C. and for their causes of action against defendants, state:

THE PARTIES

1. Nancy Kinder died on March 18, 2010, as a direct result of the negligence and lack of supervision of the above named defendants and the conduct of their owners, managers, board members, agents and employees. Plaintiff Keith Kinder is a Missouri resident and is the biological child of decedent. He is a member of the class of claimants eligible to bring of wrongful death cause of action and has been duly named as the Personal Representative for the Estate of Nancy Kinder.

2. Defendant Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center is a Missouri corporation with its principal place of business at 731 North Main Street, Sikeston, Missouri 63801. At all relevant times Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center provided services to Hunter Acres Caring Center, operated or had an ownership interest in and/or management responsibilities at Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, a proprietary nursing home operating under Missouri's Omnibus Nursing Home Act as a skilled nursing facility. At

all relevant times, Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center was in business for the care and treatment of persons in need of nursing home care. Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center was the operator of the skilled nursing facility located at 628 North West Street, Sikeston, Missouri 63801.

3. At all relevant times, Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center acted by and through its owners, operators, managers, agents, servants and employees who acted within the scope and course of their agency and employment.

4. At all relevant times Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center received money and profited from the operation of Hunter Acres Caring Center and controlled, had the right to control, and/or had the duty to control the safety, clinical and financial aspects of Hunter Acres Caring Center. Further, Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center exercised consistent oversight of Hunter Acres Caring Center by receiving, monitoring, and acting upon its daily, weekly and monthly reports of operations.

5. Defendant Circle B Enterprises Holding Company, Inc. is a Missouri corporation with its principal place of business at 731 North Main Street, Sikeston, Missouri 63801. At all relevant times, Circle B Enterprises Holding Company, Inc. owned a 100% interest in Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center.

6. At all relevant times Circle B Enterprises Holding Company, Inc. provided services to Hunter Acres Caring Center, operated or had an ownership interest in and/or management responsibilities at Hunter Acres Caring Center, a proprietary nursing home

operating under Missouri's Omnibus Nursing Home Act as a skilled nursing facility. At all relevant times, Circle B Enterprises Holding Company, Inc. was in business for the care and treatment of persons in need of nursing home care.

7. At all relevant times, Circle B Enterprises Holding Company, Inc. acted by and through its owners, operators, managers, agents, servants and employees who acted within the scope and course of their agency and employment.

8. At all relevant times Circle B Enterprises Holding Company, Inc. received money and profited from the operation of Hunter Acres Caring Center and controlled, had the right to control, and/or had the duty to control the safety, clinical and financial aspects of Hunter Acres Caring Center. Further, Circle B Enterprises Holding Company, Inc. exercised consistent oversight of Hunter Acres Caring Center by receiving, monitoring, and acting upon its daily, weekly and monthly reports of operations.

9. Defendant Heartland Personnel Leasing, Inc. is a Missouri corporation with its principal place of business at 731 North Main Street, Sikeston, Missouri 63801. Upon information and belief, defendant Heartland Personnel Leasing, Inc. employed some or all of the employees at Hunter Acres Caring Center and leased those employees to Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center.

10. Owners, agents and employees of Heartland Personnel Leasing, Inc. were individually and jointly responsible for ensuring the residents of Hunter Acres Caring Center, including Nancy Kinder, were provided a safe environment.

11. At all relevant times Heartland Personnel Leasing, Inc. provided services to Hunter Acres Caring Center, operated or had an ownership interest in and/or

management or supervisory responsibilities at Hunter Acres Caring Center, a proprietary nursing home operating under Missouri's Omnibus Nursing Home Act as a skilled nursing facility. At all relevant times, Heartland Personnel Leasing, Inc. was in business for the care and treatment of persons in need of nursing home care.

12. At all relevant times, Heartland Personnel Leasing, Inc. acted by and through its owners, operators, managers, agents, servants and employees who acted within the scope and course of their agency and employment.

13. At all relevant times Heartland Personnel Leasing, Inc. received money and profited from the operation of Hunter Acres Caring Center and controlled, had the right to control, and/or had the duty to control the safety, clinical and financial aspects of Hunter Acres Caring Center. Further, Heartland Personnel Leasing, Inc. exercised consistent oversight and supervision of Hunter Acres Caring Center by receiving, monitoring, and acting upon its daily, weekly and monthly reports of operations.

14. Defendant CEO Financial Services, Inc. is a Missouri corporation with its principal place of business at 731 North Main Street, Sikeston, Missouri 63801. At all relevant times CEO Financial Services, Inc. provided services to Hunter Acres Caring Center, operated or had an ownership interest in and/or management responsibilities at Hunter Acres Caring Center, a proprietary nursing home operating under Missouri's Omnibus Nursing Home Act as a skilled nursing facility. At all relevant times, CEO Financial Services, Inc. was in business for the care and treatment of persons in need of nursing home care.

15. At all relevant times, CEO Financial Services, Inc. acted by and through its owners, operators, managers, agents, servants and employees who acted within the

scope and course of their agency and employment.

16. At all relevant times CEO Financial Services, Inc. received money and profited from the operation of Hunter Acres Caring Center and controlled, had the right to control, and/or had the duty to control the safety, clinical and financial aspects of Hunter Acres Caring Center. Further, CEO Financial Services, Inc. exercised consistent oversight of Hunter Acres Caring Center by receiving, monitoring, and acting upon its daily, weekly and monthly reports of operations.

17. Defendant Hunter Development Properties, LLC is a Missouri Limited Liability Company with its principal place of business at 731 North Main Street, Sikeston, Missouri 63801.

18. Defendant The DCB Real Estate Partnership L.P. d/b/a Castle Partners is a Missouri company with its principal place of business at 731 North Main Street, Sikeston, Missouri 63801. Upon information and belief defendant The DCB Real Estate Partnership L.P. d/b/a Castle Partners is the General Partner of defendant Hunter Development Properties, LLC.

19. Upon information and belief, Hunter Development Properties, LLC by its General Partner defendant The DCB Real Estate Partnership L.P. d/b/a Castle Partners is the owner of the building and grounds at 628 North West Street, Sikeston, Missouri 63801 which is the location of the Hunter Acres Caring Center. At all relevant times Hunter Development Properties, LLC and/or The DCB Real Estate Partnership L.P. d/b/a Castle Partners had the right and obligation to ensure that the property being leased to Hunter Acres Caring Center was fit and safe for the purposes of the facility.

20. Upon information and belief, Hunter Development Properties, LLC and

The DCB Real Estate Partnership L.P. d/b/a Castle Partners received money and profited from the operation of Hunter Acres Caring Center and had the right to control, and/or had the duty to control the safety aspects of Hunter Acres Caring Center.

21. At all relevant times, Hunter Acres Caring Center paid a monthly lease payment to Hunter Development Properties, LLC. As a result, Hunter Development Properties, LLC and its General Partner The DCB Real Estate Partnership L.P. d/b/a Castle Partners received money and profited from the operation of Hunter Acres Caring Center and had the right to control, and/or had the duty to control the safety aspects of Hunter Acres Caring Center.

22. Defendant OPS, LLC d/b/a LTC Consulting Group is a Missouri limited liability company with its principal place of business at 731 North Main Street, Sikeston, Missouri 63801.

23. At all relevant times OPS, LLC d/b/a LTC Consulting Group provided services to Hunter Acres Caring Center, operated or had an ownership interest in and/or management responsibilities at Hunter Acres Caring Center, a proprietary nursing home operating under Missouri's Omnibus Nursing Home Act as a skilled nursing facility. At all relevant times, OPS, LLC d/b/a LTC Consulting Group was in business for the care and treatment of persons in need of nursing home care.

24. At all relevant times, OPS, LLC d/b/a LTC Consulting Group acted by and through its owners, operators, managers, agents, servants and employees who acted within the scope and course of their agency and employment.

25. At all relevant times OPS, LLC d/b/a LTC Consulting Group received money and profited from the operation of Hunter Acres Caring Center and controlled,

had the right to control, and/or had the duty to control the safety, clinical and financial aspects of Hunter Acres Caring Center. Further, OPS, LLC d/b/a LTC Consulting Group exercised consistent oversight of Hunter Acres Caring Center by receiving, monitoring, and acting upon its daily, weekly and monthly reports of operations.

26. Defendant NCS Service, LLC d/b/a Superior Nursing Solutions is a Missouri limited liability company with its principal place of business at 731 North Main Street, Sikeston, Missouri 63801.

27. At all relevant times NCS Service, LLC d/b/a Superior Nursing Solutions provided services to Hunter Acres Caring Center, operated or had an ownership interest in and/or management responsibilities at Hunter Acres Caring Center, a proprietary nursing home operating under Missouri's Omnibus Nursing Home Act as a skilled nursing facility. At all relevant times, NCS Service, LLC d/b/a Superior Nursing Solutions was in business for the care and treatment of persons in need of nursing home care.

28. At all relevant times, NCS Service, LLC d/b/a Superior Nursing Solutions acted by and through its owners, operators, managers, agents, servants and employees who acted within the scope and course of their agency and employment.

29. At all relevant times NCS Service, LLC d/b/a Superior Nursing Solutions received money and profited from the operation of Hunter Acres Caring Center and controlled, had the right to control, and/or had the duty to control the safety, clinical and financial aspects of Hunter Acres Caring Center. Further, NCS Service, LLC d/b/a Superior Nursing Solutions exercised consistent oversight of Hunter Acres Caring Center by receiving, monitoring, and acting upon its daily, weekly and monthly reports of

operations.

30. At all relevant times Maverick Consulting Group, LLC provided services to Hunter Acres Caring Center, operated or had an ownership interest in and/or management responsibilities at Hunter Acres Caring Center, a proprietary nursing home operating under Missouri's Omnibus Nursing Home Act as a skilled nursing facility. At all relevant times, Maverick Consulting Group, LLC was in business for the care and treatment of persons in need of nursing home care.

31. At all relevant times, Maverick Consulting Group, LLC acted by and through its owners, operators, managers, agents, servants and employees who acted within the scope and course of their agency and employment.

32. At all relevant times Maverick Consulting Group, LLC received money and profited from the operation of Hunter Acres Caring Center and controlled, had the right to control, and/or had the duty to control the safety, clinical and financial aspects of Hunter Acres Caring Center. Further, Maverick Consulting Group, LLC exercised consistent oversight of Hunter Acres Caring Center by receiving, monitoring, and acting upon its daily, weekly and monthly reports of operations.

33. All of the corporate defendants, limited liability companies and limited partnerships listed above are hereinafter collectively referred to as the "corporate defendants".

34. Upon information and belief, defendant Donald B. Bedell is a resident of Sikeston, Missouri. At all relevant times, defendant Donald B. Bedell was the President, member of the Board of Directors and the acting governing body of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, Circle B Enterprises

Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC. Moreover, at all relevant times, Defendant Bedell was also the General partner of The DCB Real Estate Partnership L.P. d/b/a Castle Partners.

35. Upon information and belief, defendant William C. Mitchell is a resident of Sikeston, Missouri. At all relevant times, defendant William C. Mitchell was the Vice President, member of the Board of Directors and the acting governing body of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC.

36. Upon information and belief, defendant Lonnie G. Hasty is a resident of Cape Girardeau, Missouri. At all relevant times, defendant Lonnie G. Hasty was the Treasurer, member of the Board of Directors and the acting governing body of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC.

37. Upon information and belief, defendant Clifton L. Shirrell is a resident of Sikeston, Missouri. At all relevant times, defendant Clifton L. Shirrell was the Secretary, member of the Board of Directors and the acting governing body of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC.

38. As owners, officers, managers, board members and members of the governing bodies of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter Acres

Caring Center, Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC, defendants Bedell, Mitchell, Hasty and Shirrell knew that train tracks ran behind the Hunter Acres facility.

39. As officers of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC defendants Bedell, Mitchell, Hasty and Shirrell knew that some of the residents in the Hunter Acres facility were elopement risks.

40. As officers of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC defendants Bedell, Mitchell, Hasty and Shirrell knew that residents who eloped from the Hunter Acres facility were at risk for being hit by a train and suffering severe injuries and/or death.

41. As officers of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC defendants Bedell, Mitchell, Hasty and Shirrell had a duty to provide a safe environment for the residents of Hunter Acres Caring Center . However, defendants Bedell, Mitchell, Hasty and Shirrell failed and/or refused to protect the residents of Hunter Acres Caring Center by making authorizing the construction of a fence between the facility and the railroad tracks, by authorizing sufficient personnel for supervision of Nancy Kinder or by any other means.

42. The failure of defendants Bedell, Mitchell, Hasty and Shirrell to meet their obligations as officers of defendants Hunter Acres Caring Center, Inc. d/b/a Hunter

Acres Caring Center, Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Maverick Consulting Group, LLC was wanton, willful and in conscious disregard to the health and well being of Nancy Kinder, and/or in reckless disregard to her safety and thus justifies exemplary and/or punitive damages against each individual personally.

43. Defendant Bedell negotiated with himself with respect to a lease agreement between Hunter Development Properties, LLC by its General Partner The DCB Real Estate Partnership L.P. d/b/a Castle Partners and Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center.

44. In the lease agreement, Defendant Bedell signs on behalf of Hunter Development Properties, LLC by its General Partner The DCB Real Estate Partnership L.P. d/b/a Castle Partners as its Managing Partner.

45. In the lease agreement, Defendant Bedell signs on behalf of Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center as its President.

46. In the lease agreement defendant Bedell negotiated with himself, Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center is required to pay Hunter Development Properties, LLC by its General Partner The DCB Real Estate Partnership L.P. d/b/a Castle Partners more than \$300,000 per year.

47. The terms of the lease arrangement between defendant Bedell's two companies are designed to benefit defendants Bedell, Mitchell, Hasty and Shirrell as well as his multiple corporate interests except Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, where residents such as Nancy Kinder are supposed to receive care and a safe environment.

48. In fact, the lease agreement defendant Bedell negotiated with himself is specifically designed to decrease the financial resources available to Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center where residents such as Nancy Kinder are supposed to receive care and a safe environment.

49. Defendants Bedell, Mitchell, Hasty and Shirrell were, and upon information and belief still are, owners and managing members of the corporate defendants listed above as well as members of the governing boards of the corporate defendants and members of the governing body for Hunter Acres Caring Center.

50. In their authoritative positions with the corporate defendants, defendants Bedell, Mitchell, Hasty and Shirrell had the power hire and terminate at will employees of the Hunter Acres Caring Center. Moreover, defendants Bedell, Mitchell, Hasty and Shirrell had the authority to implement or refuse measures to keep the residents of Hunter Acres Caring Center safe from injury.

51. Defendants Bedell, Mitchell, Hasty and Shirrell received compensation for the ownership and membership of the various corporate defendants all as a direct result of the operations of Hunter Acres Caring Center. Defendants Bedell, Mitchell, Hasty and Shirrell directly participated in creating conditions at Hunter Acres Caring Center, which led to the injuries incurred by Nancy Kinder by directing or authorizing the manner in which the facility's cost-cutting, budget and staffing was instituted with no regard for the discretion and the interest of Hunter Acres Caring Center or its residents, including Nancy Kinder. Defendants Bedell, Mitchell, Hasty and Shirrell created a budgetary and staffing strategy, which minimized employee quantity, employee quality, safety, training, and supervision in order to maximize profits.

52. The direct participation and control of the corporate defendants and defendants Bedell, Mitchell, Hasty and Shirrell over Hunter Acres Caring Center went beyond mere oversight and commission of acts consistent with any investor or owner.

53. At all relevant times, defendant Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center was a proprietary nursing home operating under Missouri's Omnibus Nursing Home Act as a skilled nursing facility.

54. At all relevant times, defendant Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center was in business for the care and treatment of persons in need of nursing home care and did business in Scott County, Missouri.

55. At all relevant times, defendant Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center as well as its owners, operators, managers, agents, servants and employees were required to act within the standards of care set forth in the Omnibus Budget Reconciliation Act found at 42 CFR 483, *et seq.* and all the regulations associated with the Act.

56. At all relevant times, defendant Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center as well as its owners, operators, managers, agents, servants and employees were required to act within the standards of care set forth in the Missouri regulations that apply to skilled nursing home facility, specifically those found at 19 CSR 30, *et seq.*

57. At all relevant times, defendant Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center was required to act within standards of care set forth in Missouri law, particularly section 198.003 *et seq.*

58. Defendants were engaged in a joint enterprise, in that each had a mutual

understanding for the common purpose of operating Hunter Acres Living Center and each had a right to a voice in the direction and control of the Hunter Acres Living Center and the means to carry out this common purpose.

59. 42 C.F.R. § 483.75 provides that long-term care facilities “must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, psychosocial well-being of each resident.” In furtherance of that objective, all long-term care facilities must “have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility.” 42 C.F.R. § 483.75(d)(1).

60. Upon information and belief defendants Bedell, Mitchell, Hasty and Shirrell, individually or jointly acted as the governing body of Hunter Acres Caring Center. According to federal law, defendants Bedell, Mitchell, Hasty and Shirrell individually or jointly were legally responsible for establishing and implementing policies regarding the management and operation of Little Rock Healthcare and Rehab Center.

61. Defendants Bedell, Mitchell, Hasty and Shirrell operated Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center; Circle B Enterprises Holding Company, Inc., Heartland Personnel Leasing, Inc. and Hunter Development Properties, LLC by its General Partner The DCB Real Estate Partnership L.P. d/b/a Castle Partners as if they were one business. Upon information and belief, defendants Bedell, Mitchell, Hasty and Shirrell participated in, authorized, directed, had knowledge of, consented to, and/ or acquiesced in the budgetary and staffing shortfalls at Hunter Acres Caring Center. Plaintiffs assert that defendants Bedell, Mitchell, Hasty and Shirrell used the

corporate entities constituting the corporate defendants identified herein to defeat the public policy of protecting the residents of Hunter Acres Caring Center, including Nancy Kinder, and that each of them should be held liable as an alter-ego of Hunter Acres Caring Center, Inc. d/b/a Hunter Acres Caring Center, Circle B Enterprises Holding Company, Inc.

62. Defendants Bedell, Mitchell, Hasty and Shirrell, through the corporate entities identified above, personally controlled the operation, financial, and health care services provided at Hunter Acres Caring Center. Herein, Plaintiffs assert that the personal negligent conduct and involvement in operating these companies makes Bedell, Mitchell, Hasty and Shirrell personally liable under all theories pled herein.

DEFENDANTS FAILED IN THEIR DUTIES TO NANCY KINDER

63. Nancy Kinder became a resident of defendant Hunter Acres Caring Center, Inc., d/b/a Hunter Acres Caring Center (hereinafter "Hunter Acres") on or about December 20, 2004.

64. On her first day of her residency, staff members at Hunter Acres identified her as an elopement risk.

65. At all times during her residency, defendants were responsible for providing Nancy Kinder with a safe environment.

66. At all times during her residency, defendants were responsible for insuring Nancy Kinder's safety.

67. At all times during her residency, defendants were responsible for insuring that Nancy Kinder did not elope from the Hunter Acres facility.

68. At all times during her residency, defendants knew that they were

responsible for providing Nancy Kinder with a safe environment.

69. At all times during her residency, defendants knew that they were responsible for insuring Nancy Kinder's safety.

70. At all times during her residency, defendants knew that they were responsible for making sure that Nancy Kinder did not elope from the Hunter Acres facility.

71. On December, 21, 2004, less than 24 hours into her residency at Hunter Acres, Nancy Kinder "just walked out the front door" without anyone at the Hunter Acres facility noticing.

72. Only when a passing motorist called Hunter Acres did defendants become aware that Nancy Kinder had eloped from the facility. They were then able to retrieve her approximately two blocks down Wakefield Road.

73. According the December 25, 2004 7:10 am nurses note, Nancy Kinder eloped from the building during the 11-7 shift. Nursing documentation states: "unknown of how elopement occurred".

74. That same day, Nancy Kinder again eloped from Hunter Acres without the knowledge of anyone at the facility. On this date, she was able to leave the grounds of the facility, enter a nearby apartment and hide behind a couch.

75. Despite these elopements described above (as well as others) in the first five days of her residency at Hunter Acres, defendants waited until January 4, 2005 to prepare a Care Plan for Nancy Kinder.

76. As part of the Care Plan, defendants recognized that Nancy Kinder experienced behavioral problems as a result of Alzheimer's dementia. As a result she:

“[F]requently attempts to elope from facility” and is “[D]isoriented to place and time.”

77. The goal of the January 4, 2005 Care Plan was for Nancy Kinder to “remain in facility safely.”

78. One of the means of intervention listed in the January 4, 2005 Care Plan was to “[M]onitor effectiveness [of Care Plan interventions] and report to physician prn if behavior worsens/continues.”

79. The Care Plan proved ineffective due to Nancy Kinder’s continued elopements.

80. On February 5, 2005, Nancy Kinder once again left the Hunter Acres facility completely unnoticed by defendants’ staff members.

81. On this date, Nancy Kinder was able to walk all the way down Northwest Street and enter a house. It was not until the owner of the house contacted Hunter Acres that anyone at Hunter Acres Caring Center noticed Nancy Kinder was missing.

82. Despite this extremely serious elopement event, defendants failed and/or refused to contact Nancy Kinder’s physician per the January 4, 2005 Care Plan.

83. During the course of her residency at Hunter Acres, Nancy Kinder successfully escaped from the facility on or about **61 times**.

84. On several of those successful elopements, Nancy Kinder was found walking in the snow.

85. On several other successful elopements, Nancy Kinder was found in the facility parking lot.

86. On July 29, 2008, April 21, 2009, June 11, 2009 and December 20, 2009, Nancy Kinder successfully exited the Hunter Acres facility and was walking toward the

railroad tracks located close to the back of the facility.

87. Despite these multiple elopements, including those where Nancy Kinder approached the railroad tracks, the recommendations identified in her Care Plan remained unchanged.

88. Despite the ineffectiveness of defendants' plan to prevent Nancy Kinder from eloping, defendants made no new plans to protect Nancy Kinder or provide her with a safe environment.

89. Defendants failed to build a fence around the facility that would have made it impossible for Nancy Kinder to elope from the facility and reach the railroad tracks.

90. Upon information and belief a fence was considered by defendants before Nancy Kinder's death, but ultimately rejected.

91. On March 18, 2010 Nancy Kinder successfully eloped from the Hunter Acres facility. As she was known to do, she walked toward the railroad tracks behind the facility.

92. With nothing to prevent her from reaching the railroad tracks and none of defendants' employees knowing that she was missing, Nancy Kinder found herself in the path of an oncoming train.

93. On the morning of March 18, 2010 Nancy Kinder was hit by the oncoming train.

94. As a result of the train hitting her, Nancy Kinder experienced severe and extreme pain, an "obvious deformity" to her lower extremity, multiple broken bones and lacerations, extensive injuries to her left shoulder, right groin, left hip, right upper thigh,

left lower leg, left upper thigh, right hip and right chest. She also suffered an open wound to her leg, a comminuted fracture of the mid right femur and multiple rib fractures.

95. After several hours of severe and excruciating pain, Nancy Kinder died.

96. Nancy Kinder's injuries and death were the direct result of the defendants' negligence.

97. The defendants – individually and jointly -- are liable for all damages alleged in this matter in their capacity as the owners, operators, licensee and/or managers of the Hunter Acres facility during Nancy Kinder's residency.

98. Defendants held themselves out to the Missouri Department of Health & Human Services (DHHS) and the public at large as being:

- a. Skilled in the performance of nursing, rehabilitative and other medical support services;
- b. Properly staffed, properly founded, supervised and equipped to meet the total needs of their nursing home residents and to provide a safe environment;
- c. Able to specifically meet the total nursing home, medical and safety needs of Nancy Kinder and other residents like her; and
- d. Licensed by DHHS and complying on a continual basis with all rules, regulations and standards established for nursing homes.

99. Defendants failed to discharge their obligations of care to Nancy Kinder with conscious disregard for her rights and safety. At all times mentioned herein, defendants, through their corporate officers and administrators, had knowledge of, ratified and/or otherwise authorized all of the acts and omissions that caused the injuries suffered by Nancy Kinder, as more fully set forth below. Defendants knew that this facility could not provide the minimum standard of care to the weak and vulnerable

residents of Hunter Acres. The severity of the recurrent negligence inflicted upon Nancy Kinder while under the care of the defendants' care resulted in the physical and injuries described above including her death.

100. The above-identified injuries, as well as the conduct specified below, caused Nancy Kinder to lose her personal dignity and to suffer extreme, excruciating and unnecessary pain, degradation, anguish and death.

101. While providing care and treatment to Nancy Kinder, defendants breached their duty to Nancy Kinder and are guilty of acts of negligence in violating regulations governing skilled nursing facilities, including, but not limited to one or more of the following:

- a. 19 C.S.R. 30-85.042(3). The operator shall be responsible to assure compliance with all applicable laws and rules. The administrator's responsibilities shall include the oversight of residents to assure that they receive appropriate nursing and medical care;
- b. 19 C.S.R. 30-85.042(6). The facility shall not knowingly admit or continue to care for residents whose needs cannot be met by the facility directly or in cooperation with outside resources. Facilities which retain residents needing skilled nursing care shall provide licensed nurses for these procedures
- c. 19 C.S.R. 30-85.042(37). All facilities shall employ nursing personnel in sufficient numbers and with sufficient qualifications to provide nursing and related services which enable each resident to attain or maintain the highest practicable level of physical, mental and psychosocial well-being. Each facility shall have a licensed nurse in charge who is responsible for evaluating the needs of the residents on a daily and continuous basis to ensure there are sufficient, trained staff present to meet those needs;
- d. 19 C.S.R. 30-85.042(79). In the event of accident, injury or significant change in the resident's condition, facility staff shall notify the resident's physician in accordance with the facility's

emergency treatment policies which have been approved by the supervising physician;

- e. 19 C.S.R. 30-85.042(80). In the event of accident, injury or significant change in the resident's conditions, facility staff shall immediately notify the person designated in the resident's record as the designee or responsible party;
- f. 19 C.S.R. 30-85.042(81). Staff shall inform the administrator of accidents, injuries or unusual occurrences which adversely affect, or could adversely affect, the resident. The facility shall develop and implement responsive plans of action;
- g. 19 C.S.R. 30-88.010(20). Each resident shall be free from mental and physical abuse;
- h. 19 C.S.R. 30-88.010(24). Each resident shall be treated with consideration, respect and full recognition of his/her dignity and individuality, including privacy in treatment and care of his/her personal needs;
- i. 19 C.S.R. 30-85.042(16). All persons who have any contact with residents shall not knowingly act or omit any duty in a manner which would materially and adversely effect the health, safety, welfare, or property of a resident;
- j. 19 C.S.R. 30-85.042(13). The facility shall develop policies and procedures applicable to its operation to insure the residents' health and safety and to meet the residents' needs;
- k. 19 C.S.R. 30-85.042(15). All personnel shall be fully informed of the policies of the facility and their duties;
- l. 19 C.S.R. 30-85.042(67). Each resident shall receive personal attention and nursing care in accordance with his/her condition and consistent with current acceptable nursing practice;
- m. 19 C.S.R. 30-85.042(66). Each resident shall receive twenty-four (24)-hour protective oversight and supervision;
- n. 42 CFR 483.13(b). The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;

- o. 42 CFR 483.13(c). The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property;
- p. 42 CFR 483.13(c)(2). The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency);
- q. 42 CFR 483.13(c)(3). The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress;
- r. 42 CFR 483.15(a). A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality;
- s. 42 CFR 483.15(h)(1). The facility must provide a safe, clean, comfortable, and homelike environment....;"
- t. 42 CFR 483.25. Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care;
- u. 42 CFR 483.30. The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care;
- v. 42 CFR 483.70. The facility must be designed, constructed equipped, and maintained to protect the health and safety of residents, personnel and the public;
- w. 42 CFR 483.75(d). The facility must have a governing body, or designated persons functioning as a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

- x. 42 CFR 483.75(f). The facility must ensure that nurse aides are able to demonstrate competency in skill and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

102. The negligence of defendants was willful, wanton, outrageous and constituted gross negligence and demonstrated conscious and reckless disregard for the rights of Nancy Kinder, thereby creating aggravating circumstances allowing the consideration of exemplary and/or punitive damages.

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

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

105. Nancy Kinder's injuries were proximately caused by the acts and omissions of defendants.

106. Defendants had vicarious liability for the acts and omissions of all persons or entities under their control, either directly or indirectly, including employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, agencies or pools causing or contributing to the injuries of Nancy Kinder.

107. As a direct result of defendants' negligence, Nancy Kinder incurred additional medical expenses, severe injuries and subsequent death.

108. Defendants owed a non-delegable duty to residents, including Nancy Kinder, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

109. Defendants owed a non-delegable duty to their residents, including Nancy Kinder, to exercise reasonable care in providing care, services and supervision in a safe and beneficial manner.

110. Defendants owed a non-delegable duty to their residents, including Nancy Kinder, to hire, train and supervise employees to deliver care, services and supervision to residents in a safe and beneficial manner.

111. Defendants breached these duties by failing to exercise reasonable care and by failing to prevent the mistreatment, abuse and neglect of Nancy Kinder. The negligence of Defendants includes, but is not limited to, the following acts and omissions:

- a. The failure to ensure that Nancy Kinder attained and maintained her highest level of physical, mental, and psychosocial well-being;
- b. The failure to establish, publish and/or adhere to policies for nursing personnel concerning the care, treatment and supervision of residents with nursing, medical and psychosocial needs similar to those of Nancy Kinder;

- c. The failure to provide care, treatment and supervision in accordance with physician's orders and designated Care Plans;
- d. The failure to increase the number of nursing personnel to ensure that Nancy Kinder received timely and accurate care assessments; proper treatment and supervision;
- e. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, and certified nurse assistants to meet the total needs of Nancy Kinder throughout her residency;
- f. The failure to increase the number of nursing personnel at the facility to ensure that Nancy Kinder was protected from accidental injuries by the correct use of ordered and reasonable safety measures;
- g. The failure to provide adequate supervision to the nursing staff to ensure that Nancy Kinder received adequate and sufficient nursing observation;
- h. The failure by the members of the governing body of the facility to discharge their legal and lawful obligation by ensuring that the state and federal rules and regulations designed to protect the health and safety of residents, such as Nancy Kinder, were consistently complied with on an ongoing basis and ensuring appropriate corrective measures were implemented to correct problems concerning inadequate resident care;
- i. The failure to properly in-service and orient employees to pertinent patient care needs to maintain the safety of residents;
- j. The failure to properly assess and modify Nancy Kinder's Care Plan to make it an effective instrument in preventing her ability to elope from the facility;
- k. The failure to properly secure the Hunter Acres facility when there were residents known to have the ability to elope; and
- l. The failure to eliminate access to the railroad tracks immediately adjacent to the Hunter Acres facility despite knowing that residents like Nancy Kinder were able to access the tracks and had attempted to previously.

112. A reasonably careful nursing home operating under similar circumstances

would foresee that the failure to provide the ordinary care listed above would result in devastating injuries to Nancy Kinder.

113. Defendants further breached their duty of care to Nancy Kinder by violating certain laws and regulations in force in the State of Missouri at the time of the occurrences discussed herein including, but not limited to, the following:

- a. By failing to provide the necessary care and services to attain or maintain the highest practicable, physical, mental and psychosocial well-being of Nancy Kinder, in accordance with the comprehensive assessment and updated plan of care;
- b. By failing to ensure a nursing care plan based on Nancy Kinder's problems and needs was established that contained measurable objectives and timetables to meet her medical, nursing, and mental and psychosocial needs as identified in her comprehensive assessment;
- c. By failing to review and revise Nancy Kinder's nursing care plan when her needs changed;
- d. By failing to treat Nancy Kinder courteously, fairly, and with the fullest measure of dignity;
- e. By failing to provide sufficient nursing staff and nursing personnel to ensure that Nancy Kinder attained and maintained his highest practicable physical, mental, and psychosocial well-being;
- f. By failing to notify the family and physician of Nancy Kinder of a need to alter his treatment significantly;
- g. By failing to provide a safe environment; and
- h. By failing to administer the facility in a manner that enabled it to use their resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

114. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed above. Each of the foregoing acts of negligence on the part of defendants was a proximate cause of Nancy Kinder's

injuries as more specifically as described herein, which were all foreseeable. Nancy Kinder suffered personal injuries, including excruciating pain and suffering, multiple broken bones and death all as a direct result of defendants' negligence.

COUNT I – WRONGFUL DEATH

115. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 114 as if fully set forth herein.

116. On March 18, 2010 Nancy Kinder died as a result of the abuse, neglect and lack of care and treatment she received at the Hunter Acres facility by defendants, their agents, employees, or representatives.

117. As a direct and proximate result of the negligence of defendants as stated above, Nancy Kinder suffered severe pain, conscious pain, multiple broken bones, and ultimately death. The failures as set forth in the preceding paragraphs solely or in combination, were a proximate cause of her injuries and death.

118. The negligence of defendants was willful, wanton and outrageous and constituted gross negligence and demonstrated conscious and reckless disregard for the rights of Nancy Kinder thereby justifying an award of punitive and/or exemplary damages.

119. As a result of defendants' negligence, plaintiff has incurred medical bills and funeral and burial expenses and seeks recovery thereof.

120. As a further result of the death of Nancy Kinder, plaintiff has suffered a loss of companionship, comfort, consortium, society, instruction, guidance, support, love and affection and seek recovery there for.

121. Plaintiffs further seek recovery for the conscious pain and suffering experienced by Nancy Kinder prior to her death, all of which was caused by defendants' negligence.

WHEREFORE, for the reasons set forth above, plaintiff prays for judgment against the defendants for such sums as are fair and reasonable, for punitive and/or exemplary damages, attorneys' fees, costs, and for such other relief as the Court deems just and proper.

COUNT II - NEGLIGENT HIRING/RETENTION

122. Plaintiff incorporates by reference paragraphs 1 through 121 above.

123. The defendants' duty to decedent Nancy Kinder was more than ordinary care because her medical condition made her unable to provide for her own safety such that defendants owed a heightened duty of vigilance and caution. Defendants breached this duty.

124. Defendants failed to provide the proper pre-employment screening to assure quality employees.

125. Defendants also failed to adequately monitor their employees to determine if they were providing quality patient care and supervision. As a result, inadequate employees were hired and/or retained.

126. Defendants' negligent acts and omissions were the proximate cause of decedent's injuries and subsequent death.

WHEREFORE, plaintiffs ask for judgment against defendants in an amount that is fair and reasonable in excess of the jurisdictional limit, for exemplary and/or punitive

damages, attorneys' fees, costs, prejudgment interest and for such other relief as this Court deems just and proper.

COUNT III - NEGLIGENT SUPERVISION/TRAINING

127. Plaintiffs incorporate by reference paragraphs 1 through 126 above.

128. Defendants had a duty to supervise their employees because of the unique relationship between caregivers and nursing home residents. In fact, the duty owed by defendants to decedent was more than ordinary care because Nancy Kinder's medical conditions made her helpless to provide for her own safety such that defendants owed a heightened duty of vigilance and caution. Defendants breached this duty.

129. Defendants were negligent in hiring, supervising and retaining employees and, as a result of defendants' negligent breach of their various duties, decedent suffered injuries and died and plaintiff was damaged.

130. In addition to their failure to supervise, defendants negligently failed to implement policies and procedures to prevent the type of injuries suffered by decedent, namely multiple elopements that led to a final elopement resulting in Nancy Kinder being struck by a train.

131. Defendants negligently failed to train their employees to recognize residents who were prone to elopement and to prevent resident elopements.

132. Moreover, defendants negligently failed to train their employees to contact decedent's physician when Nancy Kinder experienced a significant change of circumstances or update Nancy Kinder's care plan after she experienced significant changes to her condition.

133. Had defendants properly supervised and trained their employees to properly supervise the Hunter Acre residents, Nancy Kinder would not have been able to elope from the facility 61 times and certainly not eloped on March 18, 2010 that resulted in her death.

134. Defendants knew or should have known that their failure to appropriately supervise and train their employees was likely to cause injury to the residents, including Nancy Kinder, and that such negligence by defendants proximately caused decedent's injuries and her subsequent death.

135. It was reasonably foreseeable that the failure of defendants to implement appropriate practices, policies and procedures to prevent elopement, including but not limited to building a fence, was likely to cause injury and even death to residents and that such negligence by defendants proximately caused Nancy Kinder's injuries and untimely death.

WHEREFORE, plaintiffs ask for judgment against defendants in an amount that is fair and reasonable in excess of the jurisdictional limit, for exemplary and/or punitive damages, attorneys' fees, costs, prejudgment interest and for such other relief as this Court deems just and proper.

COUNT IV – SECTION 198

136. Plaintiff, Estate of Nancy Kinder incorporates by reference each and every allegation set forth in paragraphs 1 through 135 as fully set forth herein.

137. Keith Kinder, as designated Personal Representative for the Estate of Nancy Kinder, filed a written complaint with the Missouri's Office of the Attorney General within 180 days of the deprivation and injury to Nancy Kinder describing the facts

surrounding the deprivation in accordance with Missouri's Omnibus Nursing Home Act, §198.003 R.S.MO.

138. The Attorney General did not initiate legal action within sixty days of receipt of plaintiff's written complaint, therefore plaintiffs timely brought this action within the statutorily mandated 240 days for bringing civil suit.

WHEREFORE, plaintiffs ask for judgment against defendants in an amount that is fair and reasonable in excess of the jurisdictional limit, for exemplary and/or punitive damages, attorneys' fees, costs, prejudgment interest and for such other relief as this Court deems just and proper.

COUNT V - LOST CHANCE OF SURVIVAL

139. Plaintiff, Estate of Nancy Kinder, incorporates by reference each and every allegation set forth in paragraphs 1 through 138 as fully set forth herein.

140. As a direct and proximate result of the negligence of defendants, Nancy Kinder lost a material chance of recovery and/or survival.

WHEREFORE, plaintiffs ask for judgment against defendants in an amount that is fair and reasonable in excess of the jurisdictional limit, for exemplary and/or punitive damages, attorneys' fees, costs, prejudgment interest and for such other relief as this Court deems just and proper.

COUNT VI - PUNITIVE/EXEMPLARY DAMAGES

141. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 140 as fully set forth herein.

142. Defendants' acts and omissions were wanton, willful, in conscious disregard to the health and well being of Nancy Kinder, and/or in reckless disregard to her safety.

143. Punitive or exemplary damages are therefore justified.

WHEREFORE, plaintiffs ask for judgment against defendants in an amount that is fair and reasonable in excess of the jurisdictional limit, for exemplary and/or punitive damages, attorneys' fees, costs, prejudgment interest and for such other relief as this Court deems just and proper.

TERRY LAW FIRM, L.L.C.

David W. Terry, #44977
13321 North Outer Forty Road
Suite 800
St. Louis, Missouri 63017
(314) 878-9797
(314) 558-7961 – Facsimile
dterry@terrylawoffice.com

Attorneys for Plaintiffs