

2013 WL 4963459 (Pa.Com.Pl.) (Trial Pleading)  
Court of Common Pleas of Pennsylvania.  
Montgomery County

Thomas J. KING., by and through his Attorney-in-Fact, Judy A. King, Plaintiff,

v.

MANOR CARE OF POTTSTOWN PA, LLC, d/b/a Manorcare Health Services-Pottstown,

and

MANORCARE HEALTH SERVICES, INC.,

and

MANOR CARE, INC.,

and

HCR MANORCARE, INC.,

and

HCR HEALTHCARE, LLC.,

and

HCR II HEALTHCARE, LLC.,

and

HCR III HEALTHCARE, LLC.,

and

GGNSC PHOENIXVILLE LP, d/b/a Golden Livingcenter- Phoenixville.,

and

GGNSC PHOENIXVILLE II GP LLC.,

and

GGNSC HOLDINGS, LLC.

and

GOLDEN GATE NATIONAL SENIOR CARE, LLC.

and

GGNSC EQUITY HOLDINGS, LLC.

and

GGNSC ADMINISTRATIVE SERVICES, LLC.

and

GGNSC CLINICAL SERVICES, LLC.

and

DRUMM CORP.

and

CRUMM INVESTORS, LLC.

and

FILLMORE STRATEGIC INVESTORS, LLC.

and

FILLMORE STRATEGIC MANAGEMENT, LLC.

and

FILLMORE CAPITAL PARTNERS, LLC.

and

WASHINGTON STATE INVESTMENT BOARD.  
and  
Michael VIZOCO, Administrator, Defendants.

No. 13-27089.  
August 30, 2013.

This is not An Arbitration Case; An Assessment of Damages is Required; Jury Trial Demanded

**Complaint in Civil Action**

Wilkes & McHugh, P.A., [Ian T. Norris](#), Esquire, Attorney Identification No. 207566, Three Parkway, 1601 Cherry Street, Suite 1300, Philadelphia, PA 19102, Tel No. (215) 972-0811, Email: inorris@wilkesmchugh.com.

Attorney for Plaintiff, Thomas J. King, by and through his Attorney-in-Fact, Judy A. King.

**(The Complaint Includes a Medical Professional Liability Action)**

Plaintiff, Thomas J. King, by and through his Attorney-in-Fact, Judy A. King, by and through counsel, Wilkes & McHugh, P.A., files the instant Complaint in Civil Action, and in support thereof avers the following:

**I. PARTIES**

**A. Plaintiff**

1. Thomas J. King is an adult individual and was a resident of Manor Care of West Reading PA, LLC, d/b/a ManorCare Health Services - Pottstown (hereinafter “the ManorCare Facility”), for a period of time that ended on July 11, 2012; and Golden LivingCenter - Phoenixville (hereinafter “the Golden Facility”), for a period of time that ended on March 3, 2013.
2. Judy A. King is the daughter of Thomas King, an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 316 Linfield Rd, Parker Ford, Pennsylvania 19457.
3. Judy A. King is the Power of Attorney for Thomas J. King.

**B. Defendants, Manor Care of Pottstown PA, LLC, d/b/a ManorCare Health Services - Pottstown; HCR ManorCare, Inc.; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; Manor Care, Inc.; ManorCare Health Services, Inc. (“ManorCare Defendants”)**

4. Defendant, Manor Care of Pottstown PA, LLC, d/b/a ManorCare Health Services - Pottstown, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 724 North Charlotte Street, Pottstown, Pennsylvania 19464.
5. Defendant, Manor Care of Pottstown PA, LLC, d/b/a ManorCare Health Services - Pottstown, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Pottstown, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public

as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Facility.

6. On December 30, 2011, HCR ManorCare, LLC, merged with and into HCRMC Operations, LLC; and HCRMC Operations, LLC converted and incorporated (stock) to become HCR ManorCare, Inc.

7. Defendant, HCR ManorCare, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 N. Summit St., Toledo, OH 43604.

8. Defendant, HCR ManorCare, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Pottstown, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Facility.

9. Defendant, HCR Healthcare, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

10. Defendant, HCR Healthcare, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Pottstown, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Facility.

11. Defendant, HCR II Healthcare, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

12. Defendant, HCR II Healthcare, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Pottstown, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Facility.

13. Defendant, HCR III Healthcare, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

14. Defendant, HCR III Healthcare, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Pottstown, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Facility.

15. Defendant, ManorCare, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

16. Defendant, ManorCare, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Pottstown, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Facility.

17. Defendant, ManorCare Health Services, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

18. Defendant, ManorCare Health Services, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Pottstown, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Facility.

19. At all times material hereto, ManorCare Defendants individually and collectively owed duties, some of which were non-delegable, to the residents of the ManorCare Facility, including to Thomas King, such duties being conferred by statute, existing at common law, and/or being voluntarily assumed by each ManorCare Defendant.

20. At all times material hereto, ManorCare Defendants individually and collectively, and/or through a joint venture, owned, operated, managed and controlled the ManorCare Facility, and are individually and collectively engaged in the business of providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care services to the general public.

**C. Defendants, GGNSC Phoenixville LP, d/b/a Golden LivingCenter - Phoenixville; GGNSC Phoenixville II GP LLC; GGNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings, LLC;**

**and GGNSC Administrative Services, LLC; GGNSC Clinical Services, LLC; Drumm Corp.; Drumm Investors, LLC; Fillmore Strategic Investors, LLC; Fillmore Strategic Management, LLC; Fillmore Capital Partners, LLC; Washington State Investment Board; and Michael Vizoco, Administrator (“Golden Living Defendants”)**

21. Defendant, GGNSC Phoenixville LP, d/b/a, Golden LivingCenter - Phoenixville, upon information and belief, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and a place of business located at 833 S. Main Street, Phoenixville, Pennsylvania 19460.

22. Defendant, GGNSC Phoenixville LP, d/b/a, Golden LivingCenter - Phoenixville, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

23. Defendant, GGNSC Phoenixville II GP LLC, upon information and belief, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 833 S. Main Street, Phoenixville, Pennsylvania 19460.

24. Defendant, GGNSC Phoenixville II GP LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

25. Defendant, GGNSC Holdings, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

26. Defendant, GGNSC Holdings, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

27. Defendant, Golden Gate National Senior Care, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

28. Defendant, Golden Gate National Senior Care, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

29. Defendant, GGNSC Equity Holdings, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

30. Defendant, GGNSC Equity Holdings, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

31. Defendant, GGNSC Administrative Services, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

32. Defendant, GGNSC Administrative Services, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

33. Defendant, GGNSC Clinical Services, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

34. Defendant, GGNSC Clinical Services, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and



practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

35. Defendant, Drumm Corp., upon information and belief, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at Four Embarcadero Center, Suite 710, San Francisco, CA, 94111.

36. Defendant, Drumm Corp., is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

37. Defendant, Drumm Investors, LLC, upon information and belief, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at Four Embarcadero Center, Suite 710, San Francisco, CA, 94111.

38. Defendant, Drumm Investors, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

39. Defendant, Fillmore Strategic Investors, LLC, upon information and belief, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at Four Embarcadero Center, Suite 710, San Francisco, CA, 94111.

40. Defendant, Fillmore Strategic Investors, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

41. Defendant, Fillmore Strategic Management, LLC, upon information and belief, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at Four Embarcadero Center, Suite 710, San Francisco, CA, 94111.

42. Defendant, Fillmore Strategic Management, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

43. Fillmore Capital Partners, LLC, upon information and belief, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at Four Embarcadero Center, Suite 710, San Francisco, CA, 94111.

44. Fillmore Capital Partners, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

45. Defendant, Washington State Investment Board, upon information and belief, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at Four Embarcadero Center, Suite 710, San Francisco, CA, 94111.

46. Defendant, Washington State Investment Board, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter Phoenixville, providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care to the public in Chester County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Golden Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Thomas King and in the operation of the Golden Facility.

47. Defendant, Michael Vizoco, is an individual, who resides at 4 Dunham Loop, Berlin, NJ 08009. Upon information and belief at all relevant times herein, Michael Vizoco was the licensed Nursing Home Administrator of the Facility during the residency of Thomas King, and is therefore personally, jointly and vicariously liable, among other things, for the acts and omissions of herself and her agents, employees, servants, contractors, staff, and/or partners and all other Defendants, played a role in the care provided to Thomas King and in the operation of the Facility.

48. At all times material hereto, Golden Living Defendants individually and collectively owed duties, some of which were non-delegable, to the residents of the Golden Living Facility, including to Thomas King, such duties being conferred by statute, existing at common law, and/or being voluntarily assumed by each Golden Living Defendant.



49. At all times material hereto, Golden Living Defendants individually and collectively, and/or through a joint venture, owned, operated, managed and controlled the Golden Living Facility, and are individually and collectively engaged in the business of providing healthcare, medical services, therapy, rehabilitation, skilled nursing care, and custodial care services to the general public.

## II. JURISDICTION AND VENUE

50. Jurisdiction and venue are proper in this Honorable Court in Montgomery County, Pennsylvania, insofar as Defendants regularly conduct business in this county, the cause of action arose in this county and/or the action is being brought in any county which venue may be laid against any defendant. See [Pa.R.C.P. 1006](#) and [2179](#).

## III. FACTUAL BACKGROUND

### A. Conduct of the ManorCare Defendants

51. Prior to his discharge on July 11, 2012, Thomas King was a resident of the ManorCare Facility.<sup>1</sup>

52. Thomas King was incapable of independently providing for all of his daily care and personal needs without reliable assistance. In exchange for financial consideration, he was admitted to Defendants' Facility to obtain such care and protection.

53. The Defendants, through advertising, marketing campaigns, promotional materials and information sheets, held out themselves and the Facility as being able to provide medical, skilled nursing, rehabilitation, therapy and custodial care services to **elderly** and frail individuals, including Thomas King.

54. Defendants assumed responsibility for Thomas King's total healthcare, including the provision of nutrition, hydration, activities of daily living, medical, skilled nursing, rehabilitation, and therapy.

55. Defendants further assumed responsibility to provide Thomas King with ordinary custodial and hygiene services.

56. Defendants exercised complete and total control over the healthcare of all residents of the Facility, including Thomas King.

57. Defendants were vertically integrated organizations that were controlled by their respective members, managers and/or boards of directors, who were responsible for the operation, planning, management and quality control of the Facility.

58. The control exercised over the Facility by the Defendants included, inter alia: cash management; cost control; setting staffing levels; budgeting; marketing; maintaining and increasing census; supervision of the Facility administrator and director of nursing; supervision and oversight of the staff; development and implementation of nursing staff in-services; development and implementation of all pertinent policy and procedures; monitoring customer satisfaction; performing mock surveys; risk management; corporate and regulatory compliance; quality of care assessment; licensure and certification; controlling accounts payable and receivable; development and implementation of reimbursement strategies; retaining contract management, physician, therapy and dietary services; dictating census and payor source quotas for admissions to the facility; and employing the Facility-level, regional and corporate staff who together operated the Facility.

59. Defendants, by and through their respective members, managers, board of directors and corporate officers, utilized survey results and various other reports, including quality indicators, to monitor the care being provided at their nursing homes, including the Facility.

60. Defendants exercised ultimate authority over all budgets and had final approval over the allocation of resources for staffing, supplies, and operations of their nursing homes including the Facility.

61. As a part of their duties and responsibilities, Defendants had an obligation to establish policies and procedures that addressed the needs of the residents of the Facility, including Thomas King, with respect to the recognition and/or treatment of medical conditions, such as those experienced by Thomas King, so as to ensure that timely and appropriate care was provided for such conditions whether within the Facility, or obtained from other medical providers.

62. Defendants, acting through their administrators, members, managers, board of directors and corporate officers, were responsible for supervising the standard of professional practice by the members of their staff at the Facility, including regarding the conduct at issue herein.

63. Defendants had an obligation to employ competent, qualified and trained staff so as to ensure that proper care, treatment and services were rendered to individuals having medical, nursing and/or custodial needs, such as those presented by Thomas King as set forth herein.

64. As a part of their duties and responsibilities, Defendants had an obligation to maintain and manage the Facility with adequate staff and sufficient resources to ensure the timely recognition and appropriate treatment of the medical, nursing and/or custodial needs of the residents, such as Thomas King, whether within the Facility, or obtained from other medical care providers.

65. Defendants made a conscious decision to operate and/or manage the Facility so as to maximize profits at the expense of the care required to be provided to their residents, including Thomas King.

66. In their efforts to maximize profits, Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care to the residents.

67. Despite their knowledge of the likelihood of harm due to insufficient staffing levels, and despite complaints from staff members about insufficient staffing levels, Defendants recklessly and/or negligently disregarded the consequences of their actions, and/or negligently caused staffing levels at the Facility to be set at a level such that the personnel on duty could not and did not meet the needs of the Facility's residents, including Thomas King.

68. Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical care.

69. Defendants knew that this increase in the acuity care levels of the resident population would substantially increase the need for staff, services, and supplies necessary for the new resident population.

70. Defendants knew, or should have known, that the acuity needs of the residents in their nursing homes increased and, therefore, the required resources also increased, including the need for additional nursing staff in order to meet the needs of the residents, including Thomas King.

71. Defendants failed to provide the resources necessary, including sufficient staff, to meet the needs of the residents, including Thomas King.

72. Defendants knowingly established staffing levels that created recklessly high resident to staff ratios, including high resident to nurse ratios and high resident to nurse aide ratios.

73. Defendants knowingly disregarded patient acuity levels while making staffing decisions, and also knowingly disregarded the minimum time required by the staff to perform essential day-to-day functions and treatments.

74. The acts and omissions of the Defendants were motivated by a desire to increase the profits of the nursing homes they own, including the Facility, by knowingly, recklessly, and with total disregard for the health and safety of the residents, reducing expenditures for needed staffing, training, supervision, and care to levels that would inevitably lead to severe injuries, such as those suffered by Thomas King.

75. The actions of the Defendants were designed to increase reimbursements by governmental programs, which, upon information and belief, are the primary source of income for the Facility.

76. The aforementioned acts directly caused injury to Thomas King and were known by the Defendants.

77. Defendants knowingly sacrificed the quality of care received by all residents, including Thomas King, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by Thomas King, as described herein, which included urinary tract infection, dehydration, malnourishment, medication error, and severe pain.

78. At the time and place of the incidents hereinafter described, the Facility whereupon the incidents occurred was individually, collectively, and/or through a joint venture, owned, possessed, controlled, managed, operated and maintained under the exclusive control of the Defendants.

79. At all times material hereto, the Defendants were operating personally or through their agents, servants, workers, employees, contractors, subcontractors, staff, and/or principals, who acted with actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of the Defendants.

80. The aforementioned incidents were caused solely and exclusively by reason of the negligence, carelessness and recklessness of the Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or failure to act on the part of Thomas King.

81. Defendants, their agents, servants, contractors, subcontractors, staff and/or employees are/were, at all times material hereto, licensed professionals/professional corporations and/or businesses and the Plaintiff is asserting professional liability claims against them.

82. In addition to all other claims and demands for damages set forth herein, Plaintiff is asserting claims for ordinary negligence, custodial neglect and corporate negligence against the Defendants herein, as each of the entities named as Defendants herein are directly and vicariously liable for their independent acts of negligence, for their acts of general negligence, and for their acts of general corporate negligence.

### **B. Injuries of Thomas King at the ManorCare Facility**

83. Upon admission to the Facility and during the relevant time period, Thomas King was dependent upon the staff for his physical, mental, psycho-social, medical, nursing and custodial needs, requiring total assistance with activities of daily living, and he had various illnesses and conditions that required evaluation and treatment.

84. ManorCare Defendants knew or should have known that Thomas King was at risk for urinary tract infection, dehydration, malnourishment, and severe pain.

85. Defendants engaged in a pattern of care replete with harmful and injurious commissions, omissions and neglect as described herein.

86. Defendants deprived Thomas King of adequate care, treatment, food, water and medicine and caused him to suffer numerous illnesses and injuries, which included urinary tract infection, dehydration, malnourishment, medication error, and severe pain.

87. The severity of the negligence inflicted upon Thomas King by the Defendants, accelerated the deterioration of his health and physical condition, and resulted in physical and emotional injuries that caused him severe pain, suffering and mental anguish, together with unnecessary hospitalizations.

88. These injuries, as well as the conduct specified herein, caused Thomas King to suffer a loss of personal dignity, together with degradation, anguish and emotional trauma.

89. The ManorCare Defendants failed to obtain Mr. King's weight until 7/5/12, two days after admission. At this time he weighed 114.6 pounds.

90. On 7/8/12, there is no documentation that shows staff were providing Foley care and flushing every shift as was ordered on admission.

91. On 7/9/12, Mr. King's daughter called the ManorCare Facility and complained that her father was coughing, congested, and could not breathe. She requested that her father be sent to the hospital if his condition worsened.

92. On 7/10/12, he was suffering from side effects from Risperdal, including dizziness.

93. On 7/10/12, Mr. King is documented to have been exhibiting signs of dehydration. There is no documentation that staff appropriately encouraged fluids.

94. He was not sent to the hospital until the next day on 7/11, when he developed a change in mental status and was having aspirations.

95. On 7/11/12, Mr. King was admitted to the hospital and was documented to be dehydrated, malnourished, and suffering from a urinary tract infection. He had a PEG tube placed at the hospital.

96. Defendants accepted Thomas King as a resident fully aware of his medical history and understood the level of nursing care he required.

97. Thomas King's chart includes and evidences missing and incomplete documentation.

98. The severity of the negligence inflicted upon Thomas King by the Defendants' mismanagement, improper/under-budgeting, understaffing of the Facility and lack of training or supervision of the Facility's employees, failure to provide adequate and appropriate health care; engaging in incomplete, inconsistent and fraudulent documentation; failure to develop an appropriate care plan; failure to ensure the highest level of physical, mental and psychosocial functioning was attained; failure to provide proper medication; and failure to provide sufficient food and water, causing Thomas King to suffer urinary tract infection, dehydration, malnourishment, medication error, and severe pain.

99. As a result of the negligence, carelessness and recklessness of the Defendants herein described, Thomas King was caused to suffer serious and permanent injuries as described herein, to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or the accelerated deterioration of his health, physical and mental condition, and a loss of the ordinary pleasures of life, a loss of dignity, humiliation, and more particularly, but without limitations, urinary tract infection, dehydration, malnourishment, medication error, and severe pain, along with other body pain and damage, as well as anxiety, reaction and injury to his nerves and nervous system, some or all of which were permanent, together with other medical complications.

### C. Conduct of the Golden Living Defendants

100. Prior to his discharge on March 3, 2013, Thomas King was a resident of the Golden Living Facility, and currently remains there.<sup>2</sup>

101. Thomas King was incapable of independently providing for all of his daily care and personal needs without reliable assistance. In exchange for financial consideration, he was admitted to Defendants' Facility to obtain such care and protection.

102. The Defendants, through advertising, marketing campaigns, promotional materials and information sheets, held out themselves and the Facility as being able to provide medical, skilled nursing, rehabilitation, therapy and custodial care services to **elderly** and frail individuals, including Thomas King.

103. Defendants assumed responsibility for Thomas King's total healthcare, including the provision of nutrition, hydration, activities of daily living, medical, skilled nursing, rehabilitation, and therapy.

104. Defendants further assumed responsibility to provide Thomas King with ordinary custodial and hygiene services.

105. Defendants exercised complete and total control over the healthcare of all residents of the Facility, including Thomas King.

106. Defendants were vertically integrated organizations that were controlled by their respective members, managers and/or boards of directors, who were responsible for the operation, planning, management and quality control of the Facility.

107. The control exercised over the Facility by the Defendants included, inter alia: cash management; cost control; setting staffing levels; budgeting; marketing; maintaining and increasing census; supervision of the Facility administrator and director of nursing; supervision and oversight of the staff; development and implementation of nursing staff in-services; development and implementation of all pertinent policy and procedures; monitoring customer satisfaction; performing mock surveys; risk management; corporate and regulatory compliance; quality of care assessment; licensure and certification; controlling accounts payable and receivable; development and implementation of reimbursement strategies; retaining contract management, physician, therapy and dietary services; dictating census and payor source quotas for admissions to the facility; and employing the Facility-level, regional and corporate staff who together operated the Facility.

108. Defendants, by and through their respective members, managers, board of directors and corporate officers, utilized survey results and various other reports, including quality indicators, to monitor the care being provided at their nursing homes, including the Facility.

109. Defendants exercised ultimate authority over all budgets and had final approval over the allocation of resources for staffing, supplies, and operations of their nursing homes including the Facility.

110. As a part of their duties and responsibilities, Defendants had an obligation to establish policies and procedures that addressed the needs of the residents of the Facility, including Thomas King, with respect to the recognition and/or treatment of medical conditions, such as those experienced by Thomas King, so as to ensure that timely and appropriate care was provided for such conditions whether within the Facility, or obtained from other medical providers.

111. Defendants, acting through their administrators, members, managers, board of directors and corporate officers, were responsible for supervising the standard of professional practice by the members of their staff at the Facility, including regarding the conduct at issue herein.

112. Defendants had an obligation to employ competent, qualified and trained staff so as to ensure that proper care, treatment and services were rendered to individuals having medical, nursing and/or custodial needs, such as those presented by Thomas King as set forth herein.

113. As a part of their duties and responsibilities, Defendants had an obligation to maintain and manage the Facility with adequate staff and sufficient resources to ensure the timely recognition and appropriate treatment of the medical, nursing and/or custodial needs of the residents, such as Thomas King, whether within the Facility, or obtained from other medical care providers.

114. Defendants made a conscious decision to operate and/or manage the Facility so as to maximize profits at the expense of the care required to be provided to their residents, including Thomas King.

115. In their efforts to maximize profits, Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care to the residents.

116. Despite their knowledge of the likelihood of harm due to insufficient staffing levels, and despite complaints from staff members about insufficient staffing levels, Defendants recklessly and/or negligently disregarded the consequences of their actions, and/or negligently caused staffing levels at the Facility to be set at a level such that the personnel on duty could not and did not meet the needs of the Facility's residents, including Thomas King.

117. Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical care.

118. Defendants knew that this increase in the acuity care levels of the resident population would substantially increase the need for staff, services, and supplies necessary for the new resident population.

119. Defendants knew, or should have known, that the acuity needs of the residents in their nursing homes increased and, therefore, the required resources also increased, including the need for additional nursing staff in order to meet the needs of the residents, including Thomas King.

120. Defendants failed to provide the resources necessary, including sufficient staff, to meet the needs of the residents, including Thomas King.

121. Defendants knowingly established staffing levels that created recklessly high resident to staff ratios, including high resident to nurse ratios and high resident to nurse aide ratios.

122. Defendants knowingly disregarded patient acuity levels while making staffing decisions, and also knowingly disregarded the minimum time required by the staff to perform essential day-to-day functions and treatments.

123. The acts and omissions of the Defendants were motivated by a desire to increase the profits of the nursing homes they own, including the Facility, by knowingly, recklessly, and with total disregard for the health and safety of the residents, reducing expenditures for needed staffing, training, supervision, and care to levels that would inevitably lead to severe injuries, such as those suffered by Thomas King.

124. The actions of the Defendants were designed to increase reimbursements by governmental programs, which, upon information and belief, are the primary source of income for the Facility.

125. The aforementioned acts directly caused injury to Thomas King and were known by the Defendants.



126. Defendants knowingly sacrificed the quality of care received by all residents, including Thomas King, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by Thomas King, as described herein, which included development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain.

127. At the time and place of the incidents hereinafter described, the Facility whereupon the incidents occurred was individually, collectively, and/or through a joint venture, owned, possessed, controlled, managed, operated and maintained under the exclusive control of the Defendants.

128. At all times material hereto, the Defendants were operating personally or through their agents, servants, workers, employees, contractors, subcontractors, staff, and/or principals, who acted with actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of the Defendants.

129. The aforementioned incidents were caused solely and exclusively by reason of the negligence, carelessness and recklessness of the Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or failure to act on the part of Thomas King.

130. Defendants, their agents, servants, contractors, subcontractors, staff and/or employees are/were, at all times material hereto, licensed professionals/professional corporations and/or businesses and the Plaintiff is asserting professional liability claims against them.

131. In addition to all other claims and demands for damages set forth herein, Plaintiff is asserting claims for ordinary negligence, custodial neglect and corporate negligence against the Defendants herein, as each of the entities named as Defendants herein are directly and vicariously liable for their independent acts of negligence, for their acts of general negligence, and for their acts of general corporate negligence.

#### **D. Injuries of Thomas King at the Golden Living Facility**

132. Plaintiff is not seeking damages for the portions of Thomas King's residency that fall outside of the applicable statute of limitations, as ultimately construed by this Court. However, Plaintiff asserts that, pursuant to Pa.R.E. §404(b), evidence of prior injuries and negligence of the Defendants which pre-dates the applicable damages period are still relevant for determining Defendants' knowledge, notice, habit, routine, pattern, practice, and absence of mistake.

133. Upon admission to the Facility and during the relevant time period, Thomas King was dependent upon the staff for his physical, mental, psycho-social, medical, nursing and custodial needs, requiring total assistance with activities of daily living, and he had various illnesses and conditions that required evaluation and treatment.

134. Golden Living Defendants knew or should have known that Thomas King was at risk for development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain.

135. Defendants engaged in a pattern of care replete with harmful and injurious commissions, omissions and neglect as described herein.

136. Defendants deprived Thomas King of adequate care, treatment, food, water and medicine and caused him to suffer numerous illnesses and injuries, which included development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain.

137. The severity of the negligence inflicted upon Thomas King by the Defendants, accelerated the deterioration of his health and physical condition, and resulted in physical and emotional injuries that caused him severe pain, suffering and mental anguish, together with unnecessary hospitalizations.

138. These injuries, as well as the conduct specified herein, caused Thomas King to suffer a loss of personal dignity, together with degradation, anguish and emotional trauma.

139. Upon admission on July 17, 2012, Mr. King was noted to have a red scrotal area and shearing of the gluteal crease/sacral area.

140. On 7/18/12, Mr. King was complaining of back pain and unable to void his bladder.

141. On 7/18/12, Mr. King fell out of his wheelchair while attempting to get into bed.

142. On 7/23/12, Mr. King was complaining of left hip pain.

143. On 7/24/12, he was noted with a skin tear to his left elbow.

144. On 7/24/12, he had an elevated blood urea nitrogen level.

145. On 7/31/12, an order was received to obtain a urinalysis for culture and sensitivity.

146. On 7/31/12, Mr. King's buttocks was documented as having reddened areas.

147. On 8/2/12, notes from urologist document that Mr. King was thin, poorly nourished, and had poor hygiene.

148. By 8/12/12, Mr. King lost 13 pounds in the last two weeks.

149. On 8/12/12, he is documented with another skin tear to his left elbow.

150. On 8/28/12, his sacral area developed a new area of pink skin.

151. In September, documentation shows that Mr. King was only turned and repositioned ten days out of the entire month, despite an order for him to be turned and repositioned every two hours while in bed.

152. On 1/2/13, Mr. King was found on the bathroom floor. According to the records, he had become dizzy, lost his balance, and fell. He had a deep laceration to his forehead and a laceration to his left and middle finger, as well as some other bruising. He was sent out to the hospital.

153. At the hospital on 1/2/13, several of his wounds were closed with sutures and steri-strips.

154. He was readmitted to the Golden Living Facility later that day on 1/2/13.

155. On 1/8/13, it is documented that Mr. King was experiencing increased dizziness and falls, and that he was dehydrated.

156. On 2/3/13, Mr. King had an elevated temperature of 102.7 degrees. He was complaining of frequent urinations the night before, and had a poor appetite.

157. Mr. King remains at the Golden Living Facility.

158. Defendants accepted Thomas King as a resident fully aware of his medical history and understood the level of nursing care he required.

159. Thomas King's chart includes and evidences missing and incomplete documentation.

160. The severity of the negligence inflicted upon Thomas King by the Defendants' mismanagement, improper/under-budgeting, understaffing of the Facility and lack of training or supervision of the Facility's employees, failure to provide adequate and appropriate health care; engaging in incomplete, inconsistent and fraudulent documentation; failure to develop an appropriate care plan; failure to ensure the highest level of physical, mental and psychosocial functioning was attained; failure to provide proper medication; and failure to provide sufficient food and water, causing Thomas King to suffer development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain.

161. As a result of the negligence, carelessness and recklessness of the Defendants herein described, Thomas King was caused to suffer serious and permanent injuries as described herein, to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or the accelerated deterioration of his health, physical and mental condition, and a loss of the ordinary pleasures of life, a loss of dignity, humiliation, and more particularly, but without limitations, development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain, along with other body pain and damage, as well as anxiety, reaction and injury to his nerves and nervous system, some or all of which were permanent, together with other medical complications.

#### COUNT ONE

**Thomas J. King, by and through his Attorney-in-Fact, Judy A. King V. Manor Care of Pottstown PA, LLC, d/b/a ManorCare Health Services - Pottstown; HCR ManorCare, Inc.; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; Manor Care, Inc.; ManorCare Health Services, Inc.**

162. Plaintiff hereby incorporates by reference the preceding paragraphs as though the same were fully set forth at length herein.

163. Upon accepting Thomas King as a resident at the Facility, Defendants individually and jointly assumed direct, non-delegable duties to Thomas King to provide him with adequate and appropriate healthcare, as well as basic custodial and hygiene services, as set forth herein.

164. If Defendants were unable or unwilling to meet the needs of Thomas King, they had an affirmative duty and legal obligation to discharge Thomas King from the Facility.

165. Defendants had the ultimate responsibility of ensuring that the rights of the residents, including Thomas King, were protected.

166. Defendants owed a non-delegable duty to provide adequate and appropriate medical, skilled nursing, rehabilitation, therapy and custodial care services and supervision to Thomas King and other residents, such as reasonable caregivers would provide under similar circumstances.

167. Defendants each owed a non-delegable duty to the Facility's residents, including Thomas King, to hire, train, and supervise their employees so as to ensure that the Facility was operated and services were provided to Defendants' residents in a safe and reasonable manner.

168. Defendants, by and through their agents, employees, and/or servants each owed a duty of care to Thomas King to exercise the appropriate skill and care of licensed physicians, nurses, nurse aides, directors of nursing, and/or nursing home administrators.

169. Defendants each owed a duty and responsibility to furnish Thomas King with appropriate and competent medical, skilled nursing, rehabilitation, therapy and custodial care services.

170. Defendants each owed and failed to fulfill the following duties to Thomas King: the duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; to select, train and retain only competent staff; to oversee and supervise all persons who practiced nursing, medical and/or skilled healthcare within the Facility; to staff the facility with personnel sufficient both in number and in training to provide the care and services required by the Facility's residents; to ensure that the Facility's residents were treated with dignity and respect; to maintain sufficient funding, staffing and resources for the Facility so that its residents were provided with the care and services they required; to formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents, and to update the same as required by the applicable standards of care; to take adequate measures to rectify known problems in the delivery of hygiene and custodial services as well as in the delivery of medical, skilled nursing, rehabilitation, and therapy care; to warn residents, their family and/or representatives of the Defendants' inability to provide adequate care and services when Defendants knew or should have known of their deficiencies in providing such care and services; to refuse admission to residents to whom they knew or should have known they could not provide reasonable care and services; to not admit more residents than to whom Defendants could safely provide adequate care and services; to keep the Facility's residents free from physical and mental **abuse** and neglect; to provide a safe, decent and clean living environment for the Facility's residents; and to assist the residents in retaining and exercising all of the Constitutional, civil and legal rights to which they are entitled as citizens of the United States and of the Commonwealth of Pennsylvania.

171. In addition to the direct acts and omissions of the corporate Defendants, the Defendants also acted through their agents, servants and employees, who were in turn acting within the course and scope of their employment under the direct supervision and control of the Defendants.

172. Defendants each authored, produced and/or received frequent reports detailing the number and types of injuries, illnesses, and infections sustained by Thomas King and the residents in the Facility.

173. Despite being made aware of the types and frequency of injuries, illnesses, and/or infections, many of which were preventable, sustained by the residents of the Facility, including those suffered by Thomas King, Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

174. The Defendants knew, or should have known, of the aforementioned problems that were occurring with the care of Thomas King, as they were placed on actual and/or constructive notice of said problems, through Defendants' own reports and through governmental/state surveys.

175. Defendants, as the corporate members, managers, owners, and/or directors of the Facility, breached their duties and were, therefore, negligent, careless and reckless in their obligations to Thomas King.

176. The corporate conduct of the Defendants was independent of the negligent conduct of the employees of the Facility, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the residents, including Thomas King.

177. The breaches of duties, general negligence, professional negligence, corporate negligence, carelessness and recklessness of the Defendants, individually, vicariously and/or acting by and through their officers, directors, members, managers, physicians, physicians' assistants, nurses, nurses aides, regional and corporate staff who examined, treated and/or communicated the

condition of Thomas King, and through the administrative personnel responsible for hiring, retaining and/or dismissing staff, staff supervision and policy-making and enforcement, as well as any agents, servants, employees, contractors, subcontractors and/or consultants of the Defendants were exhibited in the following acts and omissions in the care and treatment of Thomas King:

- a. failure to hire, utilize, train and retain sufficient staff to meet the residents' needs, including those of Thomas King, which caused Thomas King to suffer urinary tract infection, dehydration, malnourishment, medication error, and severe pain;
- b. failure to provide adequate hygiene to prevent infection, to keep Thomas King clean and to preserve his dignity;
- c. failure to turn and reposition Thomas King at least once every two hours, and more often if and when required;
- d. failure to consistently provide Thomas King with adequate pressure-relieving assistive devices, including special mattresses, beds, and seat cushions;
- e. failure to accurately, adequately and consistently monitor, stage, treat and provide care to Thomas King's pressure sores;
- f. failure to ensure that Thomas King did not suffer from new pressure sores and failure to ensure that his existing pressure sores did not worsen, as required by the standard of care;
- g. failure to develop, implement and administer to Thomas King appropriate infection control polices, procedures and techniques;
- h. failure to ensure that Thomas King did not needlessly suffer from preventable and treatable pain;
- i. failure to ensure that Thomas King received her physician-ordered medications in accordance with his physicians' orders;
- j. failure to ensure that Thomas King received her physician-ordered treatments in accordance with his physicians' orders;
- k. failure to timely and appropriately notify Thomas King's physician(s) and consulting specialists when he experienced significant changes in his condition, contributing to Thomas King's injuries and illnesses, including urinary tract infection, dehydration, malnourishment, medication error, and severe pain;
- l. failure to obtain new or modified physician orders when Thomas King's changes in condition required the same;
- m. failure to timely and appropriately notify Thomas King's family and personal representatives when he experienced significant changes in his condition, contributing to Thomas King's injuries and illnesses, including urinary tract infection, dehydration, malnourishment, medication error, and severe pain;
- n. failure to provide adequate and appropriate nutrition and hydration to prevent Thomas King from suffering from weight loss and malnutrition;
- o. failure to accurately and consistently document Thomas King's needs and the care and services provided to him in response to such needs;
- p. failure to prevent fraudulent documentation and allowing the Defendants' staff to chart that they provided care to Thomas King on non-existent days, on days when the charting staff member was not actually at work, and/or on days when Thomas King was not even in Defendants' Facility;

- q. failure to ensure that Thomas King did not develop serious and permanent injuries to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, but without limitations, when he suffered urinary tract infection, dehydration, malnourishment, medication error, and severe pain;
- r. failure to respond in a timely manner with appropriate medical, nursing and custodial care when Thomas King was injured, including when he experienced urinary tract infection, dehydration, malnourishment, medication error, and severe pain, when Defendants knew or should have known that Thomas King was at risk for the same;
- s. failure to ensure that each resident, including Thomas King, received, and that the Facility provided, 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;
- t. failure to ensure that the Defendants used the results of its assessments to develop, review and revise Thomas King's comprehensive plan of care,
- u. failure to develop, implement and administer to Thomas King an appropriate, comprehensive and individualized care plan that included measurable objectives and timetables to meet his medical, nursing, custodial, mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that were to be furnished to attain or maintain his highest practicable physical, mental, and psychosocial well-being, causing Thomas King to suffer urinary tract infection, dehydration, malnourishment, medication error, and severe pain;
- v. failure to ensure that the Facility had sufficient nursing staff to provide nursing and custodial care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, including Thomas King, as determined by the residents' assessments and individual plans of care, and the failure to provide services by sufficient number of each of the required types of personnel on a twenty-four hour basis to provide nursing care to all residents, including Thomas King, in accordance with the residents' care plans;
- w. failure to administer the Facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;
- x. failure to ensure that the services provided or arranged by the Facility were provided by qualified persons in accordance with each resident's written plan of care;
- y. failure to oversee and supervise all persons who practiced nursing and/or skilled healthcare in the Facility who failed to provide adequate and appropriate health care to prevent Thomas King from suffering from urinary tract infection, dehydration, malnourishment, medication error, and severe pain;
- z. failure to formulate, adopt and enforce adequate rules, procedures and policies to prevent Thomas King from suffering urinary tract infection, dehydration, malnourishment, medication error, and severe pain;
- aa. failure to refer Thomas King to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated his condition;
- bb. failure to provide Thomas King with the necessary care and services to allow him to attain or maintain the highest practicable physical, mental and psychological well-being;
- cc. failure to implement a budget that properly funded the Facility and allowed the Facility to provide adequate and appropriate healthcare to Thomas King, including adequate staff and supplies;



dd. grossly understaffing the Facility;

ee. failure to take appropriate steps to remedy continuing problems at the Facility that Defendants knew were occurring with Thomas King's care, which included the need to increase the number of employees, hiring skilled and/or trained employees, adequately training the current employees, monitoring the conduct of the employees, and/or changing the current policies and procedures to improve resident care;

ff. failure to maintain compliance with the governmental regulations to which Defendants' delivery of care is compared as part of the annual and complaint state survey process performed by the Pennsylvania Department of Health; and,

gg. in committing the acts and omissions herein, acting in a grossly negligent manner, with reckless indifference to the rights and safety of Thomas King.

164. Upon information and belief, ManorCare Defendants' owners, officers, directors, partners, members and managers were made aware of governmental/state survey results and placed on notice of the status of their nursing homes, including the Facility.

165. Upon information and belief, the ManorCare Defendants, including their owners, officers, directors, partners, members, managers and employees, knew that they had been cited by governmental units regarding the Facility on: On 3/26/09 for failure to maintain an effective system to report, investigate and analyze infection control data to prevent the spread of infection, failure to ensure that staff used aseptic (clean) technique when providing wound care, failure to follow guidelines for contact isolation precaution when rendering direct care, failure to revise and update the comprehensive care plans to meet the current needs of residents, failure to ensure that medications were labeled and dated when opened and that expired medications were removed timely on three of four nursing units, failure to follow physicians' orders, failure to ensure that the resident's environment was free of accident hazards, failure to maintain personal privacy and dignity, failure to administer medication in accordance with physicians' orders, failure to accommodate each resident's individual needs by failing to place the call bell within reach, failure to prominently post information regarding Medicare/Medicaid benefits and contacting the State Survey Agency, failure to ensure that posted notification of the location of State survey results were available to all residents and interested individuals, failure to ensure that the Survey results were accessible in a location frequented by all residents, failure to provide a safe, functional, and sanitary environment for residents and staff, failure to maintain complete and accurate clinical records; on 6/3/09 for failure to thoroughly investigate two injuries of unknown origin to rule out **abuse**; on 10/26/09 for failure to ensure the accuracy of documentation in one of one clinical record reviewed; on 11/16/09 for failure to ensure that nursing staff and the dietician identified a decline in a resident's fluid intake, failed to ensure that staff provided a resident with sufficient fluid to prevent dehydration, and failed to ensure that staff notified the physician of a resident's inadequate fluid intake; on 2/12/10 for failure to follow physicians' orders; on 8/16/10 for failure to thoroughly and timely address a resident's concerns about staff not providing timely assistance after a fall and about not receiving meals; on 2/4/11 for failure to apply splints in accordance with physician orders to prevent further decreases in range of motion and contractures, failure of nurses to wash hands before and after direct resident contact during the medication pass; on 4/5/11 for failure to provide a resident with adequate supervision to prevent elopements and failure to notify the Department of resident elopement; on 10/5/11 for failure to address grievances in a timely manner for four of seven alert and oriented residents, failure to ensure that the planned menu was followed for the nutritional needs of residents; and on 3/30/12 for failure to provide restorative ambulation care, failure to ensure that adequate ventilation by means of outside air was provided.

166. As a direct and proximate result of the ManorCare Defendants' acts and/or omissions, and their breach of their duty of care, negligence, carelessness and recklessness, Thomas King suffered (a) severe permanent physical injuries resulting in severe pain, suffering, and disfigurement (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity, (c) loss of capacity for enjoyment of life, (d) expense of otherwise unnecessary hospitalizations, medical expenses and residency at the Facility, and (e) aggravation of his pre-existing medical conditions.

167. In causing the aforementioned injuries, ManorCare Defendants knew, or should have known, that Thomas King, would suffer such harm.

168. The conduct of ManorCare Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Thomas King.

169. The conduct of ManorCare Defendants was such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Thomas J. King, by and through his Attorney-in-Fact, Judy A. King, respectfully requests that judgment be entered in his favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

## COUNT TWO

### NEGLIGENCE PER SE FOR VIOLATIONS OF NEGLECT OF A CARE-DEPENDENT PERSON, 18 Pa.C.S.A. § 2713

**Thomas J. King, by and through his Attorney-in-Fact, Judy A. King v. Manor Care of Pottstown PA, LLC, d/b/a ManorCare Health Services - Pottstown; HCR ManorCare, Inc.; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; Manor Care, Inc.; ManorCare Health Services, Inc.**

170. Plaintiff incorporates herein by reference the preceding paragraphs as though the same were more fully set forth at length herein.

171. At all times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person,” which set forth penal consequences for neglect of a care-dependent person.

172. 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” expresses the fundamental public policy of the Commonwealth of Pennsylvania that **elders**, like children, are not to be **abused** or neglected, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such **abuse** or neglect causes injury, either physical or mental, then such conduct is actionable.

173. At all times pertinent hereto, Thomas King was a care dependent resident of the ManorCare Defendants' Facility, and thus fell within the class of persons 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” was intended to protect, thus entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” as the standard of care for measuring the ManorCare Defendants' conduct.

174. Additionally, 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” is directed, at least in part, to obviate the specific kind of harm which Thomas King sustained.

175. The ManorCare Defendants, in accepting the responsibility for caring for Thomas King as aforesaid, were negligent “per se” and violated 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” in that they:

- a. failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Thomas King for whom they were responsible to provide care as specifically set forth in this Complaint;

176. As a direct result of the aforesaid negligence “per se” of the ManorCare Defendants, Thomas King was caused to sustain serious personal injuries and damages as aforesaid.

177. The conduct of the ManorCare Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

**WHEREFORE**, Plaintiff, Thomas J. King, by and through his Attorney-in-Fact, Judy A. King, respectfully requests that judgment be entered in his favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

### COUNT THREE

#### NEGLIGENCE PER SE FOR VIOLATIONS OF THE PENNSYLVANIA OLDER ADULTS PROTECTIVE SERVICES ACT, 35 P.S. § 10225.101, et seq.

**Thomas J. King, by and through his Attorney-in-Fact, Judy A. King v. Manor Care of Pottstown PA, LLC, d/b/a ManorCare Health Services - Pottstown; HCR ManorCare, Inc.; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; Manor Care, Inc.; ManorCare Health Services, Inc.**

178. Plaintiff incorporates herein by reference the preceding paragraphs as through the same were more fully set forth at length herein.

179. At all times pertinent hereto, there was in full force and effect 35 P.S. § 10225.101, et seq., “Pennsylvania Older Adults Protective Services Act,” which sets forth civil penalties, administrative penalties and other consequences for **abuse** of a care-dependent person.

180. 35 P.S. § 10225.102, expresses the policy of the Commonwealth of Pennsylvania that:

...older adults who lack the capacity to protect themselves and are at imminent risk of **abuse**, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from **abuse**, neglect, exploitation and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of **abuse**, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

181. At all times pertinent hereto, Thomas King was an older person who was a resident of ManorCare Defendants' Facility who lacked the capacity to protect herself and thus fell within the class of persons 35 P.S. § 10225.101, et seq. was intended to protect, thus entitling Plaintiff to adopt 35 P.S. § 10225.101, et seq. as the standard of care for measuring the ManorCare Defendants' conduct.

182. Additionally, the Pennsylvania Older Adults Protective Services Act is directed, at least in part, to obviate the specific kind of harm which Thomas King sustained.

183. In addition to the aforesaid negligence, which said negligence is specifically incorporated herein, the ManorCare Defendants, in accepting the responsibility for caring for Thomas King as aforesaid, were negligent “per se” and violated 35 P.S. § 10225.101, et seq. in that they had reasonable cause to suspect that Thomas King was the victim of **abuse** or neglect and failed to report said **abuse** and neglect to the appropriate agency and law enforcement officials.

184. As a direct result of the aforesaid negligence “per se” of the ManorCare Defendants, Thomas King was caused to sustain serious personal injuries and damages as aforesaid.

185. The conduct of ManorCare Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

**WHEREFORE**, Plaintiff, Thomas J. King, by and through his Attorney-in-Fact, Judy A. King, respectfully requests that judgment be entered in his favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

#### COUNT FOUR

**Thomas J. King, by and through his Attorney-in-Fact, Judy A. King GGNSC Phoenixville LP, d/b/a Golden LivingCenter - Phoenixville; GGNSC Phoenixville II GP LLC; GGNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings, LLC; and GGNSC Administrative Services, LLC; GGNSC Clinical Services, LLC; Drumm Corp.; Drumm Investors, LLC; Fillmore Strategic Investors, LLC; Fillmore Strategic Management, LLC; Fillmore Capital Partners, LLC; Washington State Investment Board; and Michael Vizoco, Administrator**

190. Plaintiff hereby incorporates by reference the preceding paragraphs as though the same were fully set forth at length herein.

191. Upon accepting Thomas King as a resident at the Facility, Defendants individually and jointly assumed direct, non-delegable duties to Thomas King to provide him with adequate and appropriate healthcare, as well as basic custodial and hygiene services, as set forth herein.

192. If Defendants were unable or unwilling to meet the needs of Thomas King, they had an affirmative duty and legal obligation to discharge Thomas King from the Facility.

193. Defendants had the ultimate responsibility of ensuring that the rights of the residents, including Thomas King, were protected.

194. Defendants owed a non-delegable duty to provide adequate and appropriate medical, skilled nursing, rehabilitation, therapy and custodial care services and supervision to Thomas King and other residents, such as reasonable caregivers would provide under similar circumstances.

195. Defendants each owed a non-delegable duty to the Facility's residents, including Thomas King, to hire, train, and supervise their employees so as to ensure that the Facility was operated and services were provided to Defendants' residents in a safe and reasonable manner.

196. Defendants, by and through their agents, employees, and/or servants each owed a duty of care to Thomas King to exercise the appropriate skill and care of licensed physicians, nurses, nurse aides, directors of nursing, and/or nursing home administrators.

197. Defendants each owed a duty and responsibility to furnish Thomas King with appropriate and competent medical, skilled nursing, rehabilitation, therapy and custodial care services.

198. Defendants each owed and failed to fulfill the following duties to Thomas King: the duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; to select, train and retain only competent staff; to oversee and supervise all persons who practiced nursing, medical and/or skilled healthcare within the Facility; to staff the facility with personnel sufficient both in number and in training to provide the care and services required by the Facility's residents; to ensure that the Facility's residents were treated with dignity and respect; to maintain sufficient funding, staffing and resources for the Facility so that its residents were provided with the care and services they required; to formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents, and to update the same as required by the applicable standards of care; to take adequate measures to rectify known problems in the delivery of hygiene and custodial services as well as in the delivery of medical, skilled nursing, rehabilitation, and therapy care; to warn residents, their family and/or representatives of the Defendants' inability to provide adequate care and services when Defendants knew or should have known of their deficiencies in providing such care and services; to refuse admission to residents to whom they knew or should have known they could not provide reasonable care and services; to not admit more residents than to whom Defendants could safely provide adequate care and services; to keep the Facility's residents free from physical and mental **abuse** and neglect; to provide a safe, decent and clean living environment for the Facility's residents; and to assist the residents in retaining and exercising all of the Constitutional, civil and legal rights to which they are entitled as citizens of the United States and of the Commonwealth of Pennsylvania.

199. In addition to the direct acts and omissions of the corporate Defendants, the Defendants also acted through their agents, servants and employees, who were in turn acting within the course and scope of their employment under the direct supervision and control of the Defendants.

200. Defendants each authored, produced and/or received frequent reports detailing the number and types of injuries, illnesses, and infections sustained by Thomas King and the residents in the Facility.

201. Despite being made aware of the types and frequency of injuries, illnesses, and/or infections, many of which were preventable, sustained by the residents of the Facility, including those suffered by Thomas King, Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

202. The Defendants knew, or should have known, of the aforementioned problems that were occurring with the care of Thomas King, as they were placed on actual and/or constructive notice of said problems, through Defendants' own reports and through governmental/state surveys.

203. Defendants, as the corporate members, managers, owners, and/or directors of the Facility, breached their duties and were, therefore, negligent, careless and reckless in their obligations to Thomas King.

204. The corporate conduct of the Defendants was independent of the negligent conduct of the employees of the Facility, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the residents, including Thomas King.

205. The breaches of duties, general negligence, professional negligence, corporate negligence, carelessness and recklessness of the Defendants, individually, vicariously and/or acting by and through their officers, directors, members, managers, physicians, physicians' assistants, nurses, nurses aides, regional and corporate staff who examined, treated and/or communicated the condition of Thomas King, and through the administrative personnel responsible for hiring, retaining and/or dismissing staff, staff supervision and policy-making and enforcement, as well as any agents, servants, employees, contractors, subcontractors and/or consultants of the Defendants were exhibited in the following acts and omissions in the care and treatment of Thomas King:

a. failure to hire, utilize, train and retain sufficient staff to meet the residents' needs, including those of Thomas King, which caused Thomas King to suffer development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain;

failure to provide adequate hygiene to prevent infection, to keep Thomas King clean and to preserve his dignity;

c. failure to turn and reposition Thomas King at least once every two hours, and more often if and when required;

d. failure to consistently provide Thomas King with adequate pressure-relieving assistive devices, including special mattresses, beds, and seat cushions;

failure to accurately, adequately and consistently monitor, stage, treat and provide care to Thomas King's pressure sores;

f. failure to ensure that Thomas King did not suffer from new pressure sores and failure to ensure that his existing pressure sores did not worsen, as required by the standard of care;

g. failure to develop, implement and administer to Thomas King appropriate infection control polices, procedures and techniques;

h. failure to ensure that Thomas King did not needlessly suffer from preventable and treatable pain;

i. failure to ensure that Thomas King received her physician-ordered medications in accordance with his physicians' orders;

failure to ensure that Thomas King received her physician-ordered treatments in accordance with his physicians' orders;

k. failure to timely and appropriately notify Thomas King's physician(s) and consulting specialists when he experienced significant changes in his condition, contributing to Thomas King's injuries and illnesses, including development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain;

l. failure to obtain new or modified physician orders when Thomas King's changes in condition required the same;

m. failure to timely and appropriately notify Thomas King's family and personal representatives when he experienced significant changes in his condition, contributing to Thomas King's injuries and illnesses, including development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain;

n. failure to provide adequate and appropriate nutrition and hydration to prevent Thomas King from suffering from weight loss and malnutrition;

o. failure to accurately and consistently document Thomas King's needs and the care and services provided to him in response to such needs;

p. failure to prevent fraudulent documentation and allowing the Defendants' staff to chart that they provided care to Thomas King on non-existent days, on days when the charting staff member was not actually at work, and/or on days when Thomas King was not even in Defendants' Facility;

q. failure to ensure that Thomas King did not develop serious and permanent injuries to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, but without limitations, when he suffered



development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain;

r. failure to respond in a timely manner with appropriate medical, nursing and custodial care when Thomas King was injured, including when he experienced development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain, when Defendants knew or should have known that Thomas King was at risk for the same;

s. failure to ensure that each resident, including Thomas King, received, and that the Facility provided, 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;

t. failure to ensure that the Defendants used the results of its assessments to develop, review and revise Thomas King's comprehensive plan of care,

u. failure to develop, implement and administer to Thomas King an appropriate, comprehensive and individualized care plan that included measurable objectives and timetables to meet his medical, nursing, custodial, mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that were to be furnished to attain or maintain his highest practicable physical, mental, and psychosocial well-being, causing Thomas King to suffer development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain;

v. failure to ensure that the Facility had sufficient nursing staff to provide nursing and custodial care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, including Thomas King, as determined by the residents' assessments and individual plans of care, and the failure to provide services by sufficient number of each of the required types of personnel on a twenty-four hour basis to provide nursing care to all residents, including Thomas King, in accordance with the residents' care plans;

w. failure to administer the Facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

x. failure to ensure that the services provided or arranged by the Facility were provided by qualified persons in accordance with each resident's written plan of care;

y. failure to oversee and supervise all persons who practiced nursing and/or skilled healthcare in the Facility who failed to provide adequate and appropriate health care to prevent Thomas King from suffering from development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain;

z. failure to formulate, adopt and enforce adequate rules, procedures and policies to prevent Thomas King from suffering development/worsening of pressure ulcers, skin tears, falls with injury, urinary tract infections, malnutrition, weight loss, dehydration, poor hygiene, and severe pain;

aa. failure to refer Thomas King to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated his condition;

bb. failure to provide Thomas King with the necessary care and services to allow him to attain or maintain the highest practicable physical, mental and psychological well-being;

cc. failure to implement a budget that properly funded the Facility and allowed the Facility to provide adequate and appropriate healthcare to Thomas King, including adequate staff and supplies;

dd. grossly understaffing the Facility;

ee. failure to take appropriate steps to remedy continuing problems at the Facility that Defendants knew were occurring with Thomas King's care, which included the need to increase the number of employees, hiring skilled and/or trained employees, adequately training the current employees, monitoring the conduct of the employees, and/or changing the current policies and procedures to improve resident care;

ff. failure to maintain compliance with the governmental regulations to which Defendants' delivery of care is compared as part of the annual and complaint state survey process performed by the Pennsylvania Department of Health; and,

gg. in committing the acts and omissions herein, acting in a grossly negligent manner, with reckless indifference to the rights and safety of Thomas King.

206. Upon information and belief, Golden Living Defendants' owners, officers, directors, partners, members and managers were made aware of governmental/state survey results and placed on notice of the status of their nursing homes, including the Facility.

207. 71. Upon information and belief, the Defendants, including their owners, officers, directors, partners, members, managers and employees, knew that they had been cited by governmental units regarding the Facility on: 1/2/13 failed to investigate an incident of neglect for one of two residents reviewed; 9/4/12 failed to document behaviors and to ensure that behavioral interventions were attempted prior to the administration of antianxiety and antipsychotic medications; failed to follow a physician's order; failed to assure that there is an accurate count and method of disposition of medications at the time of discharge; 7/11/12 failed to assure that a care plan was updated to reflect the needs and interventions; failed to ensure an environment free from potential accidents; failed to electronically report and investigate incidents requiring hospitalization; 4/20/12 failed to have medications available for administration; 12/28/11 failed to assure that physician's orders were followed for parameters prior to the administration of medication; 8/9/11 failed to follow physician's orders for five out of 24 residents reviewed; Nursing Home Administrator and the Director of Nursing failed to monitor and supervise staff performance to ensure the health and safety of the residents; failed to update care plans related to falls and behavior episodes for three of 24 residents reviewed; failed to ensure infection control measures were maintained for wound care and for care of a resident with a central line catheter; to maintain accurate orders for medications for two out of 24 residents reviewed.

208. As a direct and proximate result of the Golden Living Defendants' acts and/or omissions, and their breach of their duty of care, negligence, carelessness and recklessness, Thomas King suffered (a) severe permanent physical injuries resulting in severe pain, suffering, and disfigurement (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity, (c) loss of capacity for enjoyment of life, (d) expense of otherwise unnecessary hospitalizations, medical expenses and residency at the Facility, and (e) aggravation of his pre-existing medical conditions.

209. In causing the aforementioned injuries, Golden Living Defendants knew, or should have known, that Thomas King, would suffer such harm.

210. The conduct of Golden Living Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Thomas King.

211. The conduct of Golden Living Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff, Thomas J. King, by and through his Attorney-in-Fact, Judy A. King, respectfully requests that judgment be entered in his favor, and against the Golden Living Defendants, in an amount in excess of the compulsory arbitration

limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

## COUNT FIVE

### NEGLIGENCE PER SE FOR VIOLATIONS OF NEGLECT OF A CARE-DEPENDENT PERSON, 18 Pa.C.S.A. § 2713

**Thomas J. King, by and through his Attorney-in-Fact, Judy A. King v. GGNSC Phoenixville LP, d/b/a Golden LivingCenter - Phoenixville; GGNSC Phoenixville II GP LLC; GGNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings, LLC; and GGNSC Administrative Services, LLC; GGNSC Clinical Services, LLC; Drumm Corp.; Drumm Investors, LLC; Fillmore Strategic Investors, LLC; Fillmore Strategic Management, LLC; Fillmore Capital Partners, LLC; Washington State Investment Board; and Michael Vizoco, Administrator**

212. Plaintiff incorporates herein by reference the preceding paragraphs as though the same were more fully set forth at length herein.

213. At all times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person,” which set forth penal consequences for neglect of a care-dependent person.

214. 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” expresses the fundamental public policy of the Commonwealth of Pennsylvania that **elders**, like children, are not to be **abused** or neglected, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such **abuse** or neglect causes injury, either physical or mental, then such conduct is actionable.

215. At all times pertinent hereto, Thomas King was a care dependent resident of the Golden Living Defendants' Facility, and thus fell within the class of persons 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” was intended to protect, thus entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” as the standard of care for measuring the Golden Living Defendants' conduct.

216. Additionally, 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” is directed, at least in part, to obviate the specific kind of harm which Thomas King sustained.

217. The Golden Living Defendants, in accepting the responsibility for caring for Thomas King as aforesaid, were negligent “per se” and violated 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” in that they:

- a. failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Thomas King for whom they were responsible to provide care as specifically set forth in this Complaint;

218. As a direct result of the aforesaid negligence “per se” of the Golden Living Defendants, Thomas King was caused to sustain serious personal injuries and damages as aforesaid.

219. The conduct of the Golden Living Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

**WHEREFORE**, Plaintiff, Thomas J. King, by and through his Attorney-in-Fact, Judy A. King, respectfully requests that judgment be entered in his favor, and against the Golden Living Defendants, in an amount in excess of the compulsory arbitration

limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

## COUNT SIX

### NEGLIGENCE PER SE FOR VIOLATIONS OF THE PENNSYLVANIA OLDER ADULTS PROTECTIVE SERVICES ACT, 35 P.S. § 10225.101, et seq.

**Thomas J. King, by and through his Attorney-in-Fact, Judy A. King v. GGNSC Phoenixville LP, d/b/a Golden LivingCenter - Phoenixville; GGNSC Phoenixville II GP LLC; GGNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings, LLC; and GGNSC Administrative Services, LLC; GGNSC Clinical Services, LLC; Drumm Corp.; Drumm Investors, LLC; Fillmore Strategic Investors, LLC; Fillmore Strategic Management, LLC; Fillmore Capital Partners, LLC; Washington State Investment Board; and Michael Vizoco, Administrator**

220. Plaintiff incorporates herein by reference the preceding paragraphs as through the same were more fully set forth at length herein.

221. At all times pertinent hereto, there was in full force and effect 35 P.S. § 10225.101, et seq., “Pennsylvania Older Adults Protective Services Act,” which sets forth civil penalties, administrative penalties and other consequences for **abuse** of a care-dependent person.

222. 35 P.S. § 10225.102, expresses the policy of the Commonwealth of Pennsylvania that:

...older adults who lack the capacity to protect themselves and are at imminent risk of **abuse**, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from **abuse**, neglect, exploitation and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of **abuse**, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

223. At all times pertinent hereto, Thomas King was an older person who was a resident of Golden Living Defendants' Facility who lacked the capacity to protect herself and thus fell within the class of persons 35 P.S. § 10225.101, et seq. was intended to protect, thus entitling Plaintiff to adopt 35 P.S. § 10225.101, et seq. as the standard of care for measuring the Golden Living Defendants' conduct.

224. Additionally, the Pennsylvania Older Adults Protective Services Act is directed, at least in part, to obviate the specific kind of harm which Thomas King sustained.

225. In addition to the aforesaid negligence, which said negligence is specifically incorporated herein, the Golden Living Defendants, in accepting the responsibility for caring for Thomas King as aforesaid, were negligent “per se” and violated 35 P.S. § 10225.101, et seq. in that they had reasonable cause to suspect that Thomas King was the victim of **abuse** or neglect and failed to report said **abuse** and neglect to the appropriate agency and law enforcement officials.

226. As a direct result of the aforesaid negligence “per se” of the Golden Living Defendants, Thomas King was caused to sustain serious personal injuries and damages as aforesaid.

227. The conduct of Golden Living Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

**WHEREFORE**, Plaintiff, Thomas J. King, by and through his Attorney-in-Fact, Judy A. King, respectfully requests that judgment be entered in his favor, and against the Golden Living Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

Date: 8-30-13

Respectfully submitted,

WILKES & McHUGH, P.A.

By:

Ian T. Norris, Esquire

Attorney for Plaintiff

Footnotes

- 1 Plaintiff is not bringing any claim pursuant to Pa. St. [62 P.S. § 1407\(c\)](#), and nothing in this Complaint should be interpreted as an attempt to recover damages pursuant to that statute.
- 2 Plaintiff is not bringing any claim pursuant to Pa. St. [62 P.S. § 1407\(c\)](#), and nothing in this Complaint should be interpreted as an attempt to recover damages pursuant to that statute.