

2010 WL 11012924 (N.C.Super.) (Trial Pleading)  
Superior Court of North Carolina.  
Superior Court Division  
Sampson County

Kenisha BULLARD, Administrator of the Estate of Ruby McLamb, Deceased, Plaintiff,

v.

LIBERTY HEALTHCARE SERVICES OF MARY GRAN NURSING CENTER, LLC, Defendants.

No. 10CVS000497.  
September 22, 2010.

(Cumulative as to Plaintiff's Original Complaint)  
(Jury Trial Demanded)

**First Amended Complaint**

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Pursuant to the Order of this Court dated September 9, 2010, Plaintiff, through her First Amended Complaint, complains of Defendants as set forth herein. (This First Amended Complaint is cumulative as to her original complaint, and contains amendments of Paragraphs 50 and 51 of the original complaint only.)

***INTRODUCTION***

1. This action arises from the pain, suffering, and wrongful death of Ms. Ruby McLamb as a result of multiple inexcusable falls (resulting in at least one fractured bone), pressure sores, contractures, infection and severe malnutrition, and other errors and injuries during her residency at a nursing facility operated, owned and/or controlled by Defendants. Plaintiff's intent is to seek damages for both survival and wrongful death claims.

***THE PARTIES, JURISDICTION & VENUE***

***Plaintiff Kenisha Buttard ("Plaintiff") and Plaintiff's Decedent Ruby McLamb ("Ms. McLamb")***

2. Ruby McLamb ("Ms. McLamb"), deceased, was a resident of Mary Gran Nursing Center ("Mary Gran"), a skilled nursing facility located at 120 Southwood Drive, Clinton, NC and operated and/or owned by Liberty Healthcare Services of Mary Gran Nursing Center, LLC, and, on information and belief, other of Defendants. Ms. McLamb was a resident at this facility from approximately May 10, 2007 through approximately March 31, 2008; and suffered personal injuries and damages while a resident there — and as a result of her residency there — including, among other things, physical and emotional pain and suffering, as well as medical expenses, related to those injuries and damages; and, ultimately, death as a result of those injuries.

3. Ms. McLamb died on July 4, 2008 in Wayne County, North Carolina,

4. Ms. McLamb died possessed of a claim for personal injuries and damages, which claim survived to Ms. McLamb's Estate.

5. Plaintiff, has been duly appointed, and is, the Administrator of the Estate of Ms. McLamb (the “Estate”); and is a citizen and resident of Sampson County, North Carolina.

6. The Estate is an estate opened and pending in Sampson County, North Carolina, said estate bearing estate file number 08 E 195.

7. Plaintiff is the daughter and a responsible party of Ms. McLamb, and brings this action for Ms. McLamb's injuries and damages as a survival action and as a wrongful death action in behalf of Ms. McLamb's beneficiaries pursuant to North Carolina law.

***Liberty Healthcare Services of Mary Gran Nursing Center, LLC d/b/a “Mary Gran Nursing Center”, “Mary Gran Nursing & Rehabilitation Center” and “Liberty Healthcare Services of Mary Gran Nsg Ctr, LLC”***

8. All defendants are alleged to be, and to have been at all relevant times, entities organized and/or existing under North Carolina law.

9. Specifically, Liberty Healthcare Services of Mary Gran Nursing Center, LLC d/b/a “Mary Gran Nursing Center”, “Mary Gran Nursing & Rehabilitation Center” and “Liberty Healthcare Services of Mary Gran Nsg Ctr, LLC” is now, and was at all times relevant to this complaint, a North Carolina limited liability company doing business in North Carolina.

10. On information and belief, “Mary Gran Nursing Center”, “Mary Gran Nursing & Rehabilitation Center” and “Liberty Healthcare Services of Mary Gran Nsg Ctr, LLC” are trade names or aliases for Liberty Healthcare Services of Mary Gran Nursing Center, LLC.

11. Plaintiff alleges alternatively, however, that “Mary Gran Nursing Center”, “Mary Gran Nursing & Rehabilitation Center” and “Liberty Healthcare Services of Mary Gran Nsg Ctr, LLC” are separate entities; and deems all allegations made against Liberty Healthcare Services of Mary Gran Nursing Center, LLC to be made separately against these d/b/a entities as well.

12. On information and belief, Liberty Healthcare Services of Mary Gran Nursing Center, LLC, does now, and at all times relevant to the allegations herein did, own and operate the skilled nursing facility known as “Mary Gran Nursing Center” and/or “Mary Gran Nursing & Rehabilitation Center” (located at 120 Southwood Drive, Clinton, NC).

13. On information and belief, the only nursing facility owned and/or operated by liberty Healthcare Services of Mary Gran Nursing Center, LLC is the facility known as facility known as “Mary Gran Nursing Center” and/or “Mary Gran Nursing & Rehabilitation Center” (located at 120 Southwood Drive, Clinton, NC).

14. This facility is referred to hereinafter as “Mary Gran”.

15. All allegations herein involving Mary Gran are also deemed made alternatively and on information and belief against all other Defendants,

16. All defendants are alleged to have carried out business in, and to have had a place of business in, Sampson County, North Carolina, at all times relevant to this complaint,

17. It is alleged that all defendants

a. Provided and were paid for providing certain services related to resident care, including the care of Ms. McLamb.

b. Were in the business of operating nursing home(s), engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment.

c. Were responsible for the daily operations of nursing homes including Mary Gran.

18. With the exception of Liberty Healthcare Services of Mary Gran Nursing Center, LLC, all defendants:

19. Provided nurse consultants to Mary Gran that were responsible for quality assurance and overseeing the survey and/or inspection process.

20. Received management fees and other compensation and/or payment from nursing homes including Mary Gran.

21. Were responsible for reviewing and approving, and did in fact review, and approve, the budgets for Mary Gran.

22. Through the budgeting process controlled the number of staff at the nursing home, as well as available supplies.

23. Were responsible for insuring that Mary Gran had adequate supplies and staff to meet the needs of the residents.

24. Through its clinical teams/staff was responsible for monitoring resident care at each facility, including Mary Gran.

25. Were responsible for correcting problems in its nursing facilities, including Mary Gran.

#### ***NOTICE OF INTENT TO ADD UNIDENTIFIED DEFENDANTS***

26. Plaintiff has made diligent efforts to identify all necessary and proper defendants to this action. More specifically, these unnamed defendants are those whose acts and/or omissions were negligent and/or otherwise tortious with, respect to the care and treatment of, or in the staffing, supervision, administration and direction of the care and treatment of Ms. McLamb during her residency at Mary Gran. To the extent certain persons or entities are not named, Plaintiff hereby gives notice that Plaintiff has intended that each and every person or entity who has a financial interest in, or any level of control (budgetary, managerial, financial, or otherwise) over, any of the named Defendant entities in this action. To the extent any such person or entity has been omitted, such persons and entities (and/or those individuals who own, direct, or manage such entities) should take notice of Plaintiff's intentions. Plaintiff further alleges the existence of a sufficient nexus between one or more of Defendants and such unintentionally omitted parties, such that those omitted parties are deemed to have sufficient notice of this action for purposes of relation back pursuant to [N.C. R. Civ. P. 15\(c\)](#).

#### ***JURISDICTION AND VENUE***

27. All defendants named herein have now, and had during the relevant times alleged herein, sufficient minimum contacts with North Carolina that are and were systematic and ongoing such that each such defendant could reasonably expect to be hailed into a North Carolina court; and which confer jurisdiction upon this court over their persons both pursuant to common law, and North Carolina's long arm jurisdictional statute, [N.C. Gen. Stat. § 1-75.4](#). These contacts include, but are not necessarily limited to, the ownership and operation of multiple skilled nursing facilities.

28. This court has subject matter jurisdiction over this matter pursuant to [N.C. Gen. Stat. § 7A-240](#) and [N.C. Gen. Stat. § 7A-243](#).

29. At all times relevant to this cause of action, Defendants have usually done and maintained a business and/or owned property in Sampson County, North Carolina; having owned and operated Mary Gran.

30. Venue is proper in this court pursuant to [N.C. Gen. Stat. § 1-79](#), [N.C. Gen. Stat. § 1-80](#) and [N.C. Gen. Stat. § 1-82](#).

***AGENCY/VICARIOUS LIABILITY***

31. On information and belief, at all times relevant to this action, each of the defendants, both individual and organizational, acted in the course and scope of an agency/employment relationship with one or more of the other defendants, and each is vicariously liable for those other defendants' actions and the claims arising therefrom as alleged herein.

32. At all times relevant to this action, each individual defendant named herein was an employee and/or agent of one or more of the other defendants; acted in the course and scope of that employment and/or agency; and those other defendants are liable for each such individual's actions alleged herein.

33. Plaintiff alleges that on all of the occasions complained of herein, Ms. McLamb was under the care, supervision, and treatment of the agents and/or employees of Defendants and that the injuries complained of herein were proximately caused by the acts and omissions of Defendants named herein.

34. Defendants had vicarious liability for the acts and omissions of all persons or entities under Defendants' control, either directly or indirectly, including its employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools causing or contributing to the injuries and death of Ms. McLamb.

35. The Defendants are directly liable for the acts and/or omissions contained herein due to the direct control, ownership, and/or management of the operations of Mary Gran. This exertion of control, ownership, and/or management by the Defendants created a dangerous environment, for all residents, including Ms. McLamb.

36. On information and belief, the Defendants were aware of the dangerous environment that was created by their methods of management and/or control at all their facilities, including Mary Gran and the harm caused to the residents of Mary Gran, including Ms. McLamb.

37. Defendants have joint and several liability for the actions complained of herein because they, on information and belief, consciously and deliberately pursued a common plan or design to commit the tortious acts described in this Complaint and these Defendants actively took part in such actions.

38. At all times material hereto, Defendants owned, operated, managed and/or controlled Mary Gran and are therefore directly liable for all the care provided at Mary Gran. The actions of each of Mary Gran servants, agents and employees as set forth herein (both medical and non-medical), are imputed to each and every defendant in this action, to include unidentified individuals and entities.

39. At all times material hereto, Defendants' representatives and staff (both medical and non-medical) acted as agents and/or employees of Defendants within the course and scope of their agency and/or employment. Consequently, Defendants are vicariously liable to plaintiff for the acts and omissions of their agents/employees under the doctrine of respondeat superior.

***DIRECT LIABILITY***

40. Plaintiff reasserts all allegations whereby Mary Gran is alleged to be liable for the actions and conduct set forth herein. Additionally, the other defendant(s) named herein are alleged specifically to be liable to Plaintiff pursuant to a direct liability theory(ies.).

41. On information and belief, each defendant, by virtue of its relationships with some or all of the other defendants, is directly liable for the conduct and claims arising therefrom as alleged herein. Specifically, but not exclusively, at all times relevant. Defendants' ownership and/or control structures among themselves, including the ownership and/or control of Mary Gran, gives

rise to liability in accordance with [U.S. v. Bestfoods, 524 U.S. 51, 118 S.Ct. 1876 \(1998\)](#)(direct parental corporate liability), or otherwise.

42. On information and belief, at all relevant times, some or all of Defendants and/or their respective boards of directors fully controlled one or more of the other defendants (some of which are wholly-owned subsidiaries), including Mary Gran, operating as one business, indivisible and indistinguishable from one another.

43. On information and belief, at all times relevant, some or all of Defendants' (and/or their respective boards of directors') management of these nursing facilities, including Mary Gran, included regularly approving reports submitted from the facilities including, labor reports, payroll reports, profit and loss statements, budget reports/analyses, patient reports, and the like.

44. On information and belief, at all times relevant, some or all of Defendants and/or their respective boards of directors controlled and/or were responsible for the training provided to the employees of Mary Gran,

45. On information and belief, at all times relevant, one or more of Defendants' and/or their respective boards of directors set and/or approved and/or controlled the budgets for Defendants' nursing facilities, including Mary Gran.

46. On information and belief, at all times relevant, one or more of Defendants' and/or their respective boards of directors, through and budgeting process, among other things, ultimately controlled, among other things, the number of staff and supplies at its facilities, including Mary Gran.

47. On information and belief, at all times relevant, one or more of Defendants' and/or their respective boards of directors issued checks to vendors and employees of the facilities, including Mary Gran.

48. On information and belief, at all times relevant, one or more of Defendants receives payment for services provided to Mary Gran, or to other of Defendants, at above-market rates; effectively siphoning funds from Mary Gran for the purpose of frustrating the creditors and prospective creditors of Mary Gran, and for the purpose of avoiding the payment of legitimate liabilities arising from the negligent operation of Defendants' facilities, including Mary Gran.

49. On information and belief, at all times relevant, one or more of Defendants was responsible for auditing patient care at each of its facilities, including Mary Gran, to ensure that residents received adequate care.

#### ***INCOMPETENCY AND COMPLIANCE WITH LIMITATIONS***

50. On information and belief, Ms. McLamb had impaired cognitive skills at certain times during her residency at Mary Gran (due to medications she was taking or other factors), and was no longer competent to handle her own affairs at such times.

51. Ms. McLamb, during those times, did not have the conscious awareness necessary to allow her to recognize that she had been a victim of nursing home abuse or negligence; or that her rights as a nursing home resident had been violated.

52. Ms. McLamb's incompetency, as previously alleged, continued until the time of her death.

53. Ms. McLamb's incompetency, as previously alleged, tolled all applicable statutes of limitations and/or repose.

#### ***RULE 9(j) COMPLIANCE***

54. Plaintiff, through the undersigned counsel, objects to the requirement that Plaintiff comply with [Rule 9\(j\) of the North Carolina Rules of Civil Procedure](#) on the grounds that [Rule 9\(j\)](#) is unconstitutional.

55. Plaintiff objects to the requirements of [Rule 9\(j\) of the North Carolina Rules of Civil Procedure](#) on the grounds that a [Rule 9\(j\)](#) certification is not required in this case, pursuant to *Lewis v. Setty*, 130 N.C. App. 606, 503 S.E.2d 673 (1998), *appeal after remand*, 140 N.C. App. 536, 537 S.E.2d 505 (2000); and *Taylor v. Vencor, Inc.*, 136 N.C. App. 528, 525 S.E.2d 201 (2000).

56. Without waiving these objections, the medical and nursing care, or lack thereof (including that given by Defendants' servants, agents, and/or employees), which is the subject of this action has been reviewed by a person(s) reasonably expected to qualify as an expert witness(es) under [Rule 702 of the North Carolina Rules of Evidence](#) and who is willing to testify that the care did not comply with the applicable standard of care.

### ***FACTUAL SUMMARY***

#### ***Ms. McLamb's Admission to Mary Gran***

57. On or about May 10, 2007, Ms. McLamb was first admitted to Mary Gran.

58. Ms. McLamb was 50 years old at the time of this admission.

59. Ms. McLamb's physical and medical condition was such that, at her admission to Mary Gran she required skilled nursing care 24 hours a day, 7 days a week.

60. Ms. McLamb was on several occasions discharged from and re-admitted to Mary Gran due to necessary hospitalizations and/or other off-site medical care needs.

61. At each admission to Mary Gran, including the first admission, Defendants, through an implied and/or express agreement, agreed that Ms. McLamb would become a resident: of Mary Gran, and, in exchange, Defendants would provide for Ms. McLamb, among other things, room, board, 24 hour nursing care, planned and supervised recreation activities, and an individualized plan of care based on her medical, social, dietary, and personal needs while a resident at Mary Gran.

62. Ms. McLamb met all her contractual obligations to Defendants, express and/or implied.

63. At her admission to and/or during her residency at Mary Gran, Ms. McLamb was at high risk for, among other things:

- a. Falls;
- b. Pressure Sores; and
- c. Contractures.

64. Defendants knew or should have known that Ms. McLamb was at high risk for these conditions.

65. Defendants nonetheless:

- a. Failed to adequately protect Ms. McLamb from falls, resulting in at least three (3) falls at Mary Gran, resulting in at least one laceration to her head, contusions/bruising on her mid-back and face, and a sacral fracture.
- b. Failed to maintain Ms. McLamb's skin integrity, resulting in multiple pressure sores, including a sacral pressure sore that was a cause and/or a contributing factor to Ms. McLamb's death;

c. Allowed/failed to properly treat the infection of Ms. McLamb's pressure sores, ultimately leading to their infection, sepsis, and death; and

d. Failed to provide proper positioning/re-positioning protocol for Ms. McLamb, leading to her development of preventable, painful and disfiguring contractures.

66. Defendants further allowed Ms. McLamb to become severely malnourished, a condition which ultimately caused and/or contributed to her death.

67. Defendants also improperly restrained Ms. McLamb both physically and chemically, exacerbating the risks severity of the injuries described herein.

68. Defendants failed to properly assess, plan, intervene/treat and re-assess Ms. McLamb with respect to these conditions, resulting in preventable injury, pain, suffering disfigurement, and, ultimately, death.

69. Due to Defendants' failures described herein, Ms. McLamb languished in pain and suffering, and without any meaningful quality of life.

70. Ms. McLamb died on April 8, 2008 from, in part, complications related to her previously described injuries.

71. Ms. McLamb's death was proximately caused by Defendants' failures and other conduct alleged throughout this complaint.

72. As a result of these failures in care, and the injuries and death that resulted, Defendants are liable to Plaintiff for the claims set forth herein.

#### *Defendants' Obligations, Knowledge, Misrepresentations, and Liability Generally*

73. At all times relevant to the allegations herein, Mary Gran was a "Nursing Home" licensed and regulated by the State of North Carolina under Chapter 131E of the North Carolina General Statutes.

74. On information and belief, at all relevant times Mary Gran was accredited by the Commission, on the Accreditation of Rehabilitation Facilities ("CARF").

75. On information and belief, at all relevant times Mary Gran was accredited by the Joint Commission on the Accreditation of Healthcare Organizations ("JCAHO").

76. At all times relevant to the allegations herein, Mary Gran received federal funds for health care services for Ms. McLamb, as well as for other residents of that facility.

77. Mary Gran, and Defendants generally, expressly and by implication had the responsibility and non-delegable duty to ensure the health, safety, and welfare of its residents, including Ms. McLamb.

78. This responsibility and non-delegable duty arose in accordance with the standards of practice and the rules, regulations and laws governing nursing homes in North Carolina, those set forth by CARF and JCAHO, and the standards of practice and the rules, regulations and laws of the United States of America.

79. Ms. McLamb, although **elderly** and arguably chronically ill at the time of her admission to Mary Gran, was entitled during her residency at Mary Gran to the same quality of care that would be given to a younger, healthier person.



80. Defendants held themselves out to the public and to the family of Ms. McLamb as being:

- a. Skilled in the performance of nursing, rehabilitative and other medical support services;
- b. Properly staffed, supervised, and equipped to meet the total needs of its nursing home residents;
- c. Providing around the clock skilled nursing care;
- d. Able to specifically meet the total nursing home, medical, and physical therapy needs of Ms. McLamb and other residents like her; and,
- e. Licensed and complying on a continual basis with all rules, regulations, and standards established for nursing homes.

81. Defendants were well aware of Ms. McLamb's medical condition and the care that she required when they represented that they could adequately care for her needs. Defendants made representations to the family of Ms. McLamb, either explicitly or implicitly, that the appropriate level of care would be provided when, on information and belief, Defendants knew, because of budgetary restrictions on staffing and supplies, that residents, including Ms. McLamb, would not get the necessary care.

82. Defendants failed to discharge their obligations of care to Ms. McLamb. As a consequence thereof, Ms. McLamb suffered catastrophic injuries, disfigurement, extreme pain, suffering, mental anguish, and death. The scope and severity of the recurrent wrongs inflicted upon Ms. McLamb while under the care of the facility accelerated the deterioration of her health and physical condition beyond that caused by the normal aging process and resulted in physical and emotional trauma.

83. AH of the above identified injuries, as well as the conduct specified below, caused Ms. McLamb to lose her personal dignity and caused her death to be preceded by extreme and unnecessary pain, degradation, anguish, otherwise unnecessary hospitalizations, disfigurement, and emotional trauma,

84. The wrongs complained of herein were of a continuing nature, and occurred throughout Ms. McLamb's residency at Mary Gran.

#### *Systemic Violations/Pattern/Practice*

85. On information and belief, Defendants were aware of the systemic staffing problems at Mary Gran throughout the residency of Ms. McLamb via labor, budget and similar reports which were available at all levels of Defendants' corporate and organizational structure, and these staffing failures directly impacted the care to the residents, including Ms. McLamb.

86. On information and belief, Defendants were aware of the systemic problems within Mary Gran relating to resident care.

#### *Damages Generally*

87. AM damages alleged herein are alleged to be in excess of \$10,000.00.

#### *CLAIM FOR RELIEF: NEGLIGENCE*

88. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

89. This claim is asserted against all defendants.



90. Defendants owed a duty to their residents, including Ms. McLamb, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

91. Defendants' employees owed a duty to residents, including Ms. McLamb, to exercise reasonable care in providing care and services in a safe and beneficial manner.

92. Defendants breached this duty by failing to deliver care and services that a reasonably careful person would have provided under similar circumstances and by failing to prevent the mistreatment, abuse and **neglect** of Ms. McLamb.

93. The negligence of the Defendants, their employees, agents and consultants, includes, but is not limited to, one or more of the following acts and omissions:

- a. The failure to provide even the minimum number of staff necessary to assist the residents of Mary Gran, including Ms. McLamb, with their needs;
- b. The failure to protect Ms. McLamb from harm within the facility;
- c. The failure to maintain appropriate records, including failure to monitor and document significant changes in Ms. McLamb's condition;
- d. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Ms. McLamb;
- e. The failure to increase the number of personnel to ensure that Ms. McLamb:
  - i. received proper assistance with activities of daily living;
  - ii. received necessary supervision; and
  - iii. received timely intervention by proper medical staff.
- f. The failure to provide nursing personnel sufficient in number to ensure that Ms. McLamb attained and maintained her highest level of physical, mental and psychosocial well-being;
- g. The failure to provide adequate supervision to the nursing staff so as to ensure that Ms. McLamb received sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Ms. McLamb;
- h. The failure to provide a nursing staff that was properly staffed, qualified, and trained;
- i. The failure to provide and ensure an adequate nursing care plan based on the needs of Ms. McLamb;
- j. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Ms. McLamb changed;
- k. The failure to provide supervision to ensure that an adequate nursing care plan for Ms. McLamb was followed by nursing personnel;
- l. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;

m. The failure to maintain medical records on Ms. McLamb in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:

i. the diagnosis of Ms. McLamb;

ii. the treatment of Ms. McLamb; and

iii. the assessment and establishment of appropriate care plans of care and treatment.

n. The failure to adequately and appropriately monitor Ms. McLamb and recognize significant changes in her health status.

94. A reasonably careful nursing home, operating under similar circumstances, would foresee that the failure to provide the ordinary care listed above would result in devastating injuries to Ms. McLamb.

95. As a direct and proximate result of Defendants' negligence, Ms. McLamb suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls, pressure sores, malnutrition, contractures, infections, and death.

96. As a direct and proximate result of the negligence of Defendants as set out above, Ms. McLamb also incurred significant hospital and medical expenses.

97. As a direct and proximate result of the negligence of Defendants, individually and collectively, Ms. McLamb suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which far exceed \$10,000.00.

#### ***CLAIM FOR RELIEF: MEDICAL MALPRACTICE***

98. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

99. This claim is asserted against all defendants.

100. Although the specific defendants other than Mary Gran and Liberty Healthcare Services of Mary Gran Nursing Center, LLC are specifically alleged *not* to be "health care providers" as defined and contemplated by N.C. Gen. Stat. § 90-21.1.1 et seq., Plaintiff's claims for medical malpractice are nonetheless alternatively asserted against those, specific defendants (both directly and via vicarious liability), in the event that the Court determines those defendants to in fact be "health care providers."

101. All Defendants are jointly and severally liable for the medical malpractice negligence of any or all of the other defendants, on the basis of those defendants' agency, employment, or other relationships.

102. Alternatively, to the extent that the Court deems those specific defendants to be "health care providers," Plaintiff's claims for medical malpractice are asserted against those specific defendants as well.

103. The acts and omissions of Defendants constitute negligence on the part of the Defendants, in that the Defendants;

a. Owed a duty to provide Ms. McLamb with medical care and treatment in accordance with the standards and practices applicable to medical personnel with similar training and experience in the same or similar communities at the time of the acts and omissions alleged herein.

b. Failed to exercise and/or possess a requisite degree of professional learning, skill, ability and care as are ordinarily possessed and exercised by other health care providers similarly situated considering the state of nursing and medical knowledge at the time;

c. Failed to exercise their best medical judgment in the treatment and care of Ms. McLamb;

d. Failed to exercise reasonable care and diligence in the application of their knowledge, skill and ability in the care and treatment of Ms. McLamb; and

e. Failed to furnish nursing and medical services to Ms. McLamb in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in similar communities at the time of Ms. McLamb's treatment as required by [N.C. Gen. Stat. § 90-21.12](#).

104. As a direct and proximate result of Defendants' negligence, Ms. McLamb suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls, pressure sores, malnutrition, contractures, infections, and death.

105. As a direct and proximate result of the negligence of Defendants as set out above, Ms. McLamb also incurred significant hospital and medical expenses.

106. As a direct and proximate result of the negligence of Defendants, individually and collectively, Ms. McLamb suffered personal injuries and damages in an amount to be proven at a trial of this matter, but which would exceed \$10,000.00.

#### ***CLAIM FOR RELIEF: WRONGFUL DEATH***

107. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

108. This claim is asserted against all defendants.

109. As a direct and proximate result of the negligence and/or medical malpractice of the Defendants as set forth previously herein, Ms. McLamb suffered injuries and harm resulting in her death.

110. As a direct and proximate result of the death of Ms. McLamb, Plaintiff and next of kin have been deprived of the care, assistance, society, companionship, and kindly offices of Ms. McLamb.

111. As a direct and proximate result of the negligence of Defendants and the ultimate death of Ms. McLamb caused thereby, Ms. McLamb's estate incurred medical expenses, other out of pocket expenses, and funeral expenses.

112. Pursuant to the wrongful death statute of North Carolina, [N.C. Gen. Stat. § 28 A-18.2](#), and other applicable statutes in effect on the date of Ms. McLamb's death, demand is made for damages caused by the unlawful and wrongful death of Ms. McLamb as previously alleged, and is set forth in detail in [N.C. Gen. Stat. § 28A-18.2](#), to which reference is made and including the following:

a. Hospital, medical, and ambulance expenses incident to the deadly injuries of Ms. McLamb;

b. Compensation for Ms. McLamb's pain and suffering;

c. The reasonable funeral expenses of Ms. McLamb;

d. The services, protection, care, and assistance of Ms. McLamb, whether voluntary or obligatory to the persons entitled to the damages recovered;

e. The society, companionship, comfort, and kindly offices of Ms. McLamb to the persons entitled to the damages recovered.

113. By reason of the wrongful death of Ms. McLamb, Plaintiff has been damaged and is entitled to recover of the Defendants a lump sum sufficient to compensate the estate of Ms. McLamb for the present monetary value of Ms. McLamb to her family, and for her services, protection, care and assistance, society, companionship, security, comfort and kindly offices to her next of kin and for funeral, hospital and medical expenses, all in an amount to be determined by a jury, but in any event an amount in excess of Ten Thousand Dollars (\$10,000.00).

114. By reason of the wrongful death of Ms. McLamb, which was proximately caused by the negligent, willful, wanton, reckless, and gross acts of negligence by Defendants, as previously herein alleged, Plaintiff is entitled to recover punitive damages in an amount in excess of \$10,000.00. The specific aggravating factors supporting punitive damages for wrongful death are set out under a separate claim for relief herein, and the same allegations are hereby incorporated herein by reference as if fully set forth.

#### ***CLAIM FOR RELIEF: PUNITIVE DAMAGES***

115. Plaintiff here re-alleges and incorporates all other allegations set forth herein.

116. This claim is asserted against all defendants, and on information and belief.

117. The acts and omissions of Defendants as alleged previously herein were reckless, willful and/or wanton; and were performed in conscious disregard of and indifference to the rights and safety of resident. Defendants knew or should have known that the above acts or failures to act were reasonably likely to result in severe physical and/or mental suffering, as well as the other injuries and damages of Ms. McLamb alleged previously herein.

118. The lack of healthcare and conduct of Defendants as previously alleged herein is alleged to be self-explanatory and obvious for purposes of supporting punitive damages, and all allegations herein are alleged to so support this claim. Nonetheless, Plaintiff alleges specifically, but not exclusively, that the conduct of Defendants supporting punitive damages includes:

a. Understaffing

i. Defendants' conscious disregard for, and encouragement of, understaffing at Mary Gran, as more specifically alleged previously herein.

ii. Defendants' knowledge that this understaffing would result in serious harm to Mary Gran residents, including Ms. McLamb — as well as residents at other of its facilities - as more specifically alleged previously herein.

iii. Defendants' pursuit of monetary gain via a calculated plan to understaff and/or continue understaffing at its facilities, including Mary Gran, despite the dangers to Defendants' residents at that facility and others. This plan was a widespread pattern and/or practice of Defendants; and had been continuing despite complaints from its residents and their families, including complaints in the form of lawsuits and litigation.

iv. The widespread nature of this pattern and/or practice of understaffing at this and other of Defendants' facilities created a dangerous atmosphere for patients/residents in Defendants' care in large numbers of Defendants' facilities, and over a substantial period of time.

v. Defendants' officers, directors, managers and managing agents at all relevant times knew, or in the exercise of ordinary care should have known, about the understaffing problem at Mary Gran and other of their facilities, and failed to take action to correct the problem; instead ignoring this dangerous problem, and continuing to drain money/assets away from its facilities, including Mary Gran, and ultimately into the accounts of those other persons and businesses controlling its nursing home operations. The resources drained away from these facilities could have been, and should have been, used to increase staffing levels.

b. Defendants' repeated failure to intervene and care for the serious and life- threatening medical conditions and injuries of Ms. McLamb, medical conditions and injuries which were clearly life threatening and fully known to Defendants; such medical conditions having been previously set forth herein, and the same ultimately leading to death.

119. As a direct and proximate result of Defendants' reckless, willful and wanton conduct, Ms. McLamb suffered damages and injuries, including, but not limited to, intense pain and suffering, as well as aggravation of her other infirmities, which resulted in great physical and mental pain and suffering and, ultimately, death. Specifically, but not exclusively, these damages and injuries included falls, pressure sores, malnutrition, contractures, infections, and death.

120. Plaintiff is therefore entitled to punitive damages in an amount sufficient to deter Defendants and others similarly situated from engaging in such outrageous behavior, an amount that is, on information and belief, in excess of \$10,000.00.

WHEREFORE, Plaintiff prays:

1. That the Court award Plaintiff all compensatory damages alleged, including special and general damages as alleged herein, for both the survival claims and wrongful death claims alleged, in an amount exceeding \$10,000.00.
2. That the Court award Plaintiff punitive damages in an amount exceeding \$10,000.00;
3. That the Court award Plaintiff interest as allowed by law;
4. That the Court award Plaintiff the costs of this action;
5. That the Court award Plaintiff reasonable attorney fees as allowed by law;
6. That all issues so triable be tried by a jury; and
7. For such other and former legal or equitable relief that this Court deems just and proper under the circumstances.

This the 20<sup>th</sup> day of *September*, 2010.

THE LAW OFFICES OF THOMAS WAITT PLEASANT, PLLC

By: <<signature>>

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