

IN THE CIRCUIT COURT OF CALLAWAY COUNTY
STATE OF MISSOURI

CAROLYN SUMMERS, individually and by)
and through her Next Friend,)
CAROL SAMSON,)

and)

CAROL SAMSON, the personal representative)
of the ESTATE OF CARL LEE DEBRODIE,)

Plaintiffs,)

v.)

Case No. 18CW-CC _____

SECOND CHANCE HOMES, LLC,)
Serve at: c/o Rachael Rowden)
5151 State Road J)
Fulton, Missouri 65251)

JURY TRIAL DEMANDED

RACHAEL ROWDEN,)
Serve at: 5151 State Road J)
Fulton, Missouri 65251)

SHERRY PAULO,)
Serve at: 202 West 6th St.)
Fulton, Missouri 65251)

CALLAWAY COUNTY, MISSOURI,)
Serve at: c/o Denise Hubbard, County Clerk)
10 East 5th St.)
Fulton, Missouri 65251)

CALLAWAY COUNTY PUBLIC)
ADMINISTRATOR'S OFFICE,)
Serve at: 10 West 6th St.)
Fulton, Missouri 65251)

KAREN DIGH ALLEN,)
 Serve at: 10 West 6th St.)
 Fulton, Missouri 65251)
)
 THE STATE OF MISSOURI,)
 Serve at: Eric Greitens, Governor)
 State Capitol Building, Room 216)
 Jefferson City, Missouri 65102)
)
 MISSOURI DEPARTMENT OF)
 MENTAL HEALTH,)
 Serve at: 1706 East Elm St.)
 Jefferson City, Missouri 65101)
)
 MARK STRINGER, Director of the Missouri)
 Department of Mental Health,)
 Serve at: 1706 East Elm St.)
 Jefferson City, Missouri 65101)
)
 MISSOURI DEPARTMENT OF MENTAL)
 HEALTH, DIVISION OF DEVELOPMENTAL)
 DISABILITIES,)
 Serve at: 1706 East Elm St.)
 Jefferson City, Missouri 65101)
)
 VALERIE HUHN, Director of the Missouri)
 Department of Mental Health, Division of)
 Developmental Disabilities,)
 Serve at: 1706 East Elm St.)
 Jefferson City, Missouri 65101)
)
 MISSOURI DEPARTMENT OF MENTAL)
 HEALTH, DIVISION OF DEVELOPMENTAL)
 DISABILITIES, COMMUNITY OPERATIONS,)
 Serve at: 1706 East Elm St.)
 Jefferson City, Missouri 65101)
)
 WENDY WITCIG, Deputy Director of the)
 Missouri Department of Mental Health,)
 Division of Developmental Disabilities,)

Community Operations,)
Serve at: 1706 East Elm St.)
Jefferson City, Missouri 65101)

MISSOURI DEPARTMENT OF MENTAL)
HEALTH, DIVISION OF DEVELOPMENTAL)
DISABILITIES, CENTRAL REGION,)
Serve at: 1706 East Elm St.)
Jefferson City, Missouri 65101)

MARCY VOLNER, Assistant Director of the)
Missouri Department of Mental Health,)
Division of Developmental Disabilities,)
Central Region,)
Serve at: 1706 East Elm St.)
Jefferson City, Missouri 65101)

MISSOURI DEPARTMENT OF MENTAL)
HEALTH, DIVISION OF DEVELOPMENTAL)
DISABILITIES, CENTRAL MISSOURI)
REGIONAL OFFICE,)
Serve at: 1706 East Elm St.)
Jefferson City, Missouri 65101)

WENDY DAVIS, Director of the Missouri)
Department of Mental Health, Division of)
Developmental Disabilities, Central)
Missouri Regional Office,)
Serve at: 1706 East Elm St.)
Jefferson City, Missouri 65101)

CALLAWAY COUNTY SPECIAL SERVICES,)
Serve at: 2635 Fairway Dr.)
Fulton, Missouri 65251)

JULIA KAUFMANN, Executive Director of)
Callaway County Special Services,)
Serve at: 2635 Fairway Dr.)
Fulton, Missouri 65251)

JOHN DOE 1,)
)
 JOHN DOE 2,)
)
 JOHN DOE 3,)
)
 JOHN DOE 4,)
)
Defendants.)

PETITION

COME NOW Plaintiffs, by and through undersigned counsel, and for their
Petition, state as follows:

1. This is an action for damages resulting from the wrongful death of Carl Lee
DeBrodie, as well as an action under 42 U.S.C. § 1983, 42 U.S.C. § 1985, and other common
law avenues of recovery for deprivations of plaintiffs’ rights.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the persons and subject matter in that the
acts/omissions forming the basis of this Petition took place in Callaway County, Missouri.

3. Venue is proper in this Court because the cause of action arose in Fulton,
Callaway County, Missouri.

PARTIES

4. Plaintiff Carolyn Summers is the natural mother of the decedent, Carl Lee
DeBrodie, is a resident of Cole County, Missouri. Ms. Summers is a Class I beneficiary
under § 537.080, RSMo.

5. Carol Samson is the sister-in-law of Carolyn Summers and has moved this Court to be appointed Next Friend of Plaintiff Carolyn Summers for the purposes of this action. Ms. Samson has also been appointed as the personal representative of the Estate of Carl Lee DeBrodie. Ms. Samson is a resident of Osage County, Missouri.

6. Defendant Second Chance Homes, LLC (hereinafter "Defendant Second Chance"), is a limited liability company formed under the laws of the State of Missouri. Defendant Second Chance is registered with the Missouri Secretary of State as an LLC for the purpose of owning and operating real estate. Defendant Second Chance may be served at its registered agent as shown in the caption of this Petition.

7. Defendant Rachael Rowden (hereinafter "Defendant Rowden") is, on information and belief, a resident of Callaway County, Missouri. Defendant Rowden is sued herein in her official and individual capacities to the furthest extent permitted by law and may be served as shown in the caption of this Petition.

8. On information and belief, Defendant Rowden is the owner, operator, manager, and/or supervisor of Defendant Second Chance.

9. Defendant Sherry Paulo (hereinafter "Defendant Paulo"), was, at all times relevant herein, an individual residing in Callaway County, Missouri, and was employed as a "qualified disability professional" with Defendant Second Chance. Defendant Paulo is sued herein in her individual and official capacities to the fullest extent permitted by law and may be served as shown in the caption of this Petition.

10. Defendant Callaway County (hereinafter "Defendant Callaway County") is a division of the State of Missouri and duly organized under Missouri law. Defendant Callaway County may be served as shown in the caption of this Petition.

11. Defendant Callaway County Public Administrator's Office (hereinafter "Defendant Public Administrator") is a public entity located in Callaway County, Missouri, and which is tasked with, among others, acting as a court-appointed guardian and/or conservator for disabled and/or incapacitated individuals residing within Callaway County, Missouri. Defendant Public Administrator may be served as shown in the caption of this Petition.

12. Defendant Karen Digh Allen (hereinafter "Defendant Allen"), was, at all times relevant to this action, a citizen and resident of the State of Missouri, and who was the duly qualified, elected, and acting Public Administrator of Callaway County. On information and belief, Defendant Allen was the policymaker of Defendant Public Administrator. Defendant Allen is sued herein in her individual and official capacities to the fullest extent permitted by law and may be served as shown in the caption of this Petition.

13. Defendant State of Missouri (hereinafter "Defendant State of Missouri") is a governmental entity and state organized and existing under the United States Constitution and the Constitution of the State of Missouri, with its principal offices in the

City of Jefferson, Cole County, Missouri. Defendant State of Missouri may be served as shown in the caption of this Petition.

14. Defendant Missouri Department of Mental Health (hereinafter, "Defendant DMH"), is an agency of the State of Missouri, and which provides a variety of services to the citizen of Missouri, including, but not limited to, the treatment, habilitation, and rehabilitation of Missourians suffering from mental disorders and developmental disabilities. Defendant DMH may be served as shown in the caption of this Petition.

15. Defendant Mark Stringer (hereinafter "Defendant Stringer"), is the duly appointed Director of the Missouri Department of Mental Health, and whose office is located in Jefferson City, Cole County, Missouri. On information and belief, the Office of the Director is responsible for the overall operations of Defendant DMH and its divisions. Defendant Stringer is sued herein in his official and individual capacities to the fullest extent permitted by law and may be served as shown in the caption of this Petition.

16. Defendant Missouri Department of Mental Health, Division of Developmental Disabilities (hereinafter "Defendant DMH-DD") is a division of Defendant DMH, and which serves a population that has developmental disabilities such as intellectual disabilities, cerebral palsy, head injuries, autism, epilepsy, and certain learning disabilities. Defendant DMH-DD may be served as shown in the caption of this Petition.

17. Defendant Valerie Huhn (hereinafter "Defendant Huhn") is the duly appointed Director of Defendant DMH-DD, and whose offices are located in Jefferson City, Cole County, Missouri. Defendant Huhn is sued herein in her individual and official capacities to the fullest extent permitted by law and may be served as shown in the caption of this Petition.

18. Defendant Missouri Department of Mental Health, Division of Developmental Disabilities, Community Operations (hereinafter "Defendant Community Operations"), is an arm of Defendant DMH-DD and, on information and belief, handles generally the provisions of mental-health-related services in the community at large. Defendant Community Operations may be served as shown in the caption of this Petition.

19. Defendant Wendy Witcig (hereinafter "Defendant Witcig") is, on information and belief, an individual residing in the State of Missouri, and who is the Deputy Director of Defendant Community Operations. Defendant Witcig is sued herein in her individual and official capacities to the fullest extent permitted by law and may be served as shown in the caption of this Petition.

20. Defendant Missouri Department of Mental Health, Division of Developmental Disabilities, Central Region (hereinafter "Defendant Central Office") is an arm of Defendant DMH-DD and Defendant Community Operations. On information and belief, Defendant Central Office is tasked with the operation and oversight of certain

local offices of Defendant DMH-DD, including the Central Missouri Regional Office (with offices in Jefferson City, Kirksville, and Rolla) and the Sikeston Regional Office (with additional offices in Poplar Bluff). Defendant Central Office's coverage area includes Fulton, Callaway County, Missouri. Defendant Central Office may be served as shown in the caption of this Petition.

21. Defendant Marcy Volner (hereinafter "Defendant Volner"), is the duly appointed Assistant Director of Defendant Central Office, and on information and belief, whose duties involve the operation, oversight, and management of Defendant Central Office. Defendant Volner is sued herein in her individual and official capacities to the fullest extent permitted by law and may be served as shown in the caption of this Petition.

22. Defendant Missouri Department of Mental Health, Division of Developmental Disabilities, Central Missouri Regional Office (hereinafter "Defendant CMRO") is an arm of Defendant DMH-DD and Defendant Community Operations. On information and belief, Defendant CMRO's service and coverage area includes Fulton, Callaway County, Missouri. Defendant CMRO may be served as shown in the caption of this Petition.

23. Defendant Wendy Davis (hereinafter "Defendant Davis"), is the duly appointed Director of Defendant Central MO, and on information and belief, whose duties involve the operation, oversight, and management of Defendant Central MO. On information and belief, Defendant Davis's offices are located in Columbia, Boone County,

Missouri. Defendant Davis is sued herein in her individual and official capacities to the fullest extent permitted by law and may be served as shown in the caption of this Petition.

24. Defendant Callaway County Special Services (hereinafter "Defendant CCSS") is, on information and belief, a non-profit corporation established to provide support and case-management services for individuals with developmental disabilities in Callaway County, Missouri. On information and belief, Defendant CCSS was administratively dissolved in December 2013 but continued and continues to operate under the name "Callaway County Special Services."

25. On information and belief, Defendant CCSS is a "County Senate Bill 40 Board" that was established by Defendant Callaway County.

26. Defendant Julia Kaufmann (hereinafter "Defendant Kaufmann") is, on information and belief, an individual residing in Boone County, Missouri. Defendant Kaufmann was, at all relevant times, the Executive Director of Defendant CCSS and was charged with the management and oversight of Defendant CCSS; as such, Defendant Kaufmann was the policymaker of Defendant CCSS. Defendant Kaufmann is sued herein in her individual and official capacities to the fullest extent permitted by law.

27. Defendant John Doe 1 (hereinafter "Defendant Unknown Homes"), was, at all times relevant to this action, a citizen and resident of the State of Missouri, and was employed by Defendant Second Chance and Defendant Rowden. Defendant Unknown Homes is sued herein in his/her individual and official capacities to the full extent

permitted by law. On information and belief, Defendant Unknown Homes's identity will be readily ascertainable through the discovery process.

28. Defendant John Doe 2 (hereinafter "Defendant Unknown Public") was, at all times relevant to this action, a citizen and resident of the State of Missouri, and was employed by Defendant Public Administrator. Defendant Unknown Public is sued herein in his/her individual and official capacities to the full extent permitted by law. On information and belief, Defendant Unknown Public's identity will be readily ascertainable through the discovery process.

29. Defendant John Doe 3 (hereinafter "Defendant Unknown DMH"), was, at all times relevant to this action, a citizen and resident of the State of Missouri, and was employed by Defendant DMH, Defendant DMH-DD, Defendant Community Operations, Defendant Central Office, and/or Defendant Central MO. Defendant Unknown DMH is sued herein in his/her individual and official capacities to the full extent permitted by law. On information and belief, Defendant Unknown DMH's identity will be readily ascertainable through the discovery process.

30. Defendant John Doe 4 (hereinafter "Defendant Unknown CCSS") was, at all times relevant to this action, a citizen and resident of the State of Missouri, and was employed by Defendant CCSS. Defendant Unknown CCSS is sued herein in his/her individual and official capacities to the fullest extent permitted by law. On information

and belief, Defendant Unknown CCSS's identity will be readily ascertainable through the discovery process.

31. At all times relevant hereto, Defendants were acting and operating through their employees, agents, and/or servants, all of whom were acting within the course and scope of their employment, agency and/or master/servant relationship with Defendants. Accordingly, Defendants are liable for the tortious acts and/or omissions of their employees, agents, and/or servants under doctrines of *respondeat superior* and/or vicarious liability.

32. At all times relevant hereto, each defendant's actions and/or omissions were taken under the color of Missouri law and pursuant to the policies, regulations, or decisions officially adopted or promulgated by Defendant State of Missouri, Defendant Callaway County, Defendant DMH and its divisions and subdivisions, Defendant CCSS,

33. On information and belief, Defendant Second Chance is a private, for-profit entity that is licensed and certified by Defendant DMH and Defendant DMH-DD to serve as a residential healthcare facility for individuals with developmental disabilities.

34. On information and belief, Defendant State of Missouri, Defendant DMH, and Defendant DMH-DD contract with Defendant Second Chance to provide residential healthcare services on behalf of the State of Missouri for individuals with developmental disabilities.

35. On information and belief, Defendant Second Chance receives federal and state monies, including funds from Defendant DMH and Defendant DMH-DD, in exchange for its provision of residential support services for individuals with developmental disabilities.

36. On information and belief, Defendant CCSS contracted and contracts Defendant State of Missouri, Defendant DMH, Defendant DMH-DD, Defendant Public Administrator, and/or Defendant Callaway County to provide targeted case management services for individuals with developmental disabilities in Callaway County, Missouri.

37. On information and belief, Defendant CCSS receives federal and state monies in exchange for its provision of services with respect to individuals with developmental disabilities in Callaway County, Missouri.

38. On information and belief, Defendants Callaway County, Public Administrator, State of Missouri, DMH, DMH-DD, Community Operations, Central Office, CMRO, and CCSS have purchased liability insurance related to, and that provides coverage for the claims asserted herein.

GENERAL FACTUAL ALLEGATIONS

39. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

40. At all times relevant hereto, Defendant Second Chance operated multiple residential facilities in the Mid-Missouri area, including a residential facility located at 298 Claymine Drive in Fulton, Callaway County, Missouri (hereinafter “the Facility”).

41. On information and belief, the Facility was licensed and classified by Defendant DMH and Defendant DMH-DD as an Independent Supported Living Facility.

42. The Facility was home to individuals with developmental disabilities, with usually two or three residing at the Facility at any given time.

43. The Facility was located within the boundaries and service area of Defendant Central Office and Defendant CRMO.

44. Prior to some unknown time believed to be in early 2017, Carl Lee DeBrodie (hereinafter “Carl”) was a 31-year-old resident of Fulton, Callaway County, Missouri.

45. Carl suffered from certain developmental disabilities such that he was under a court-imposed guardianship and conservatorship.

46. On or about January 8, 2008, the Probate Division of the Callaway County Circuit Court adjudicated Carl as an incapacitated and disabled adult in Cause No. 07CW-PR00138 and appointed Defendant Public Administrator / Defendant Allen to serve as Carl’s guardian and conservator.

47. Defendant Public Administrator / Defendant Allen served in that capacity from January 2008 until Carl’s death.

48. In or about 2010, Carl began residing at a residential facility ran by Defendant Second Chance, but located in Millersburg, Missouri.

49. Eventually, Carl moved to the Facility ran by Defendant Second Chance in Fulton, Callaway County, Missouri.

50. On or about April 17, 2017, the Fulton Police Department received a report indicating that Carl had gone missing from the Facility.

51. Thereafter, an extensive search, eight-day search for Carl ensued, including a wide-sweeping foot search and the use of drones and tracking canines.

52. On or about April 24, 2017, Carl was found dead inside a locked storage unit at Moore EZ Storage, also located in Fulton, Callaway County, Missouri.

53. Carl's body was found placed into a container, which was then put into another wooden container, wherein concrete was poured, thereby encasing Carl's body.

54. On information and belief, and based on the level of decomposition, Carl's body had been encased in concrete for several months.

55. On information and belief, Carl had been missing and/or deceased for several months prior to Defendant Second Chance's filing of a missing person's report in April 2017.

56. Pursuant to § 475.120.2, RSMo, as Carl's guardian, Defendant Public Administrator and Defendant Allen had an obligation to act in Carl's best interest.

57. Pursuant to § 475.120.3, RSMo, as Carl's guardian, Defendant Public Administrator and Defendant Allen owed Carl the following duties:

- a. Section 475.120.3(1), RSMo—to assure that Carl resided in the best and least restrictive setting reasonably available;
- b. Section 475.120.3(2), RSMo—to assure that Carl received medical care and other needed services; and
- c. Section 475.120.3(3), RSMo—to promote and protect the care, comfort, safety, health and welfare of Carl.

58. Defendant DMH, through Defendant DMH-DD, has developed and promulgated a manual establishing rules and guidelines concerning the "targeted case management", oversight, and supervision of individuals with developmental disabilities (hereinafter "TCM Manual").

59. On information and belief, the TCM Manual applies to and is used and implemented by Defendant DMH-DD, Defendant Community Operations, Defendant Central Office, Defendant CMRO, Defendant CCSS, and Defendant Second Chance, including their respective employees and agents.

60. On information and belief, Defendant Callaway Public Admin, Defendant Allen, Defendant DMH-DD, Defendant Community Operations, Defendant Central Office, Defendant CMRO, Defendant CCSS, Defendant Second Chance, Defendant Unknown Homes, Defendant Unknown Public Admin, Defendant Unknown DMH, and

Defendant Unknown CCSS were responsible for providing targeted case management services with respect to Carl.

61. The aforementioned entities and individuals providing targeted case management services for Carl may herein be collectively referred to as “TCM Providers.”

62. At all relevant times, the Defendant Public Administrator, Defendant Allen, and Defendant Unknown Public Administrator were required to act within the standards and practices as set forth in the Missouri Probate Code, specifically Chapters 472–75 of the Revised Statutes of Missouri.

63. At all relevant times, the TCM Providers were required to act within the standards and practices as set forth in the Missouri statutes that apply to the provision of residential services for individuals with developmental disabilities, including Ch. 630 of the Revised Statutes of Missouri.

64. At all relevant times, the TCM Providers were required to act within the standards and practices as set forth in the Missouri regulations that apply to the provision of residential services for individuals with developmental disabilities, including 9 CSR 10-1.010, *et seq.*; 9 CSR 40-1.015, *et seq.*; and 9 CSR 45-2.010, *et seq.*

65. According to the TCM Manual, targeted case management involves an ongoing process of monitoring and assessing the quality, timeliness, and effectiveness of services and support received by an individual with developmental disabilities.

66. According to the TCM Manual, Carl's TCM Providers were required to provide monthly face-to-face visits to monitor, among others, Carl's health, environment, safety, and the exercise of his rights.

67. According to the TCM Manual, the outcome of those month-to-month visits was to be documented in a log note.

68. Defendant DMH and Defendant DMH-DD have promulgated certain "Division Directives" establishing policies and procedures applicable to Defendant DMH, Defendant DMH-DD, its subdivisions and sub-entities, regional offices, Senate Bill 40 Boards, and not-for-profit agencies involved in the provisions of targeted case management services for individuals with developmental disabilities.

69. At all relevant times, Carl's TCM Providers were and are subject to said "Division Directives."

70. According to Division Directive 3.020, titled "Support Monitoring Policy and Implementation Guidelines," provides that Carl's TCM Providers were required to provide monthly face-to-face visits to monitor, among others, Carl's health, environment, safety, and the exercise of his rights.

71. Because Carl was an individual with developmental disabilities and lived in an Independent Supported Living Facility (i.e., the Facility), Carl's TCM Providers had a duty to monitor his health and safety, to complete a monthly face-to-face assessment, and to record any findings.

72. According to 9 CSR 40-2.075(7), Defendant Second Chance was required to have written policies and procedures in place relating to departures and absences of its residents, including the creation of a mechanism to alert staff when an individual is unaccounted for.

73. As an individual served by Defendant DMH-DD, Carl was entitled to the following rights, among others, pursuant to 9 CSR 45-3.030:

- a. To be treated with respect and dignity as a human being (9 CSR 45-3.030(1)(A));
- b. To be free from physical, emotional, sexual, and verbal abuse, and financial exploitation (9 CSR 45-3.030(1)(C)); and
- c. To report any violation of his rights free from retaliation and without fear of retaliation (9 CSR 45-3.030(1)(R)).

74. Pursuant to 9 CSR 45-3.030(3), Carl's rights under 9 CSR 45-3.030(1) were not to be restricted by his TCM Providers without affording him due process.

75. For several months leading up to Carl's reported disappearance, the TCM Providers prevented Plaintiffs from seeing or visiting with Carl.

76. On information and belief, the TCM Providers obligated to make face-to-face contact with Carl and to document said interactions, failed to do so.

77. On information and belief, instead of conducting the mandated face-to-face contact, the TCM Providers drafted and submitted false reports indicating that face-to-face contact had in fact been made.

78. On information and belief, several months elapsed without face-to-face contact between Carl and his TCM Providers.

79. On information and belief, the TCM Providers worked together to conceal and suppress the fact that face-to-face contacts were not being performed as required, and had not been performed for several months.

80. On information and belief, the TCM Providers knowingly submitted false reports, including fabricated details of face-to-face contacts and interactions with Carl.

81. On information and belief, the TCM Providers worked together to prevent Plaintiffs, family, and friends from visiting and interacting with Carl.

82. The TCM Providers represented to Plaintiffs that face-to-face contacts with Carl had been made in the months leading up to his reported disappearance.

83. On information and belief, those representations to Plaintiffs were false, and no face-to-face contact had been made with Carl for months leading up to his reported disappearance.

84. On information and belief, the TCM Providers waited several months to report Carl's disappearance in order to continue to receive and collect state and federal monies for the provision of residential services for Carl.

85. On information and belief, the TCM Providers actively prevented Plaintiffs for months from visiting or contacting Carl, with the purpose of concealing the fact that Carl was missing and/or already deceased.

86. On information and belief, had the TCM Providers actually performed their respective mandated obligations to make monthly face-to-face contacts with Carl, Plaintiffs and the TCM Providers would have discovered irregularities or deficiencies in the care and treatment of Carl.

87. On information and belief, had the TCM Providers actually performed their respective mandated obligations to make monthly face-to-face contacts with Carl, and to ensure for the safety and well-being of Carl, Carl would not have suffered an untimely and premature death.

88. Carl's actual date of death is unknown.

89. Carl's certification of death lists April 24, 2017, as his date of death.

90. Carl's certification of death lists the cause of death as "unknown."

91. On information and belief, The TCM Providers caused or contributed to cause Carl's death.

92. On information and belief, the TCM Providers know the circumstances surrounding Carl's death and are withholding that information from Plaintiffs.

93. On information and belief, the TCM Providers withheld the circumstances of Carl's death from Plaintiffs for several months.

94. On information and belief, the TCM Providers' actions and/or inactions caused or contributed to cause Carl's death, including the TCM Providers':
- a. Failure to adequately supervise Carl;
 - b. Failure to make monthly face-to-face visits with Carl, said visits being non-discretionary tasks;
 - c. Failure to give Carl sufficient and proper attention, despite their knowledge of Carl's developmental disabilities and tendencies;
 - d. Failure to adequately supervise the Facility's other residents, despite their knowledge of Carl's developmental disabilities and tendencies;
 - e. Failure to supervise Defendant Second Chance and its employees;
 - f. Failure to implement and enforce rules and procedures with regard to how the Facility's residents' health and safety would be monitored;
 - g. Failure to implement and enforce rules and procedures with regard to reporting absences of residents in the Facility;
 - h. Failure to hire sufficient personnel to maintain adequate supervision and ensure the safety of the Facility's residents, including Carl;
 - i. Failure to hire adequately trained and/or certified individuals charged with the care and supervision of residents of the Facility, including Carl;

- j. Negligently permitting Carl to be exposed to the dangers and risks of the Facility and its condition, without providing adequate or sufficient safeguard for Carl; and
- k. Failure to adequately train individuals charged with the care of individuals with developmental disabilities at independent residential facilities.

95. On information and belief, Defendant DMH, Defendant DMH-DD, Defendant Community Operations, Defendant Central Office, and Defendant CMRO did not have any policies or procedures in place to audit or otherwise verify through multiple sources that the agents and entities—including Defendants Second Chance and CCSS, and their employees, agents, etc.—providing targeted case management services for individuals with developmental disabilities were adequately performing their mandatory duties, including making face-to-face monthly visits.

96. On information and belief, Carl's death resulted from a dangerous condition of property at the Facility.

97. On information and belief, the TCM Provider created the dangerous condition of property at the Facility, or knew or reasonably should have known of the dangerous condition, and failed to take any steps to remedy or otherwise eliminate the dangerous condition.

98. While Defendant State of Missouri is not the record-holding owner of the Facility, Defendant State of Missouri is nevertheless liable for the dangerous condition of

property at the Facility with respect to § 537.600, RSMo., because Defendant State of Missouri exercised control over the Facility through its inspections and certification process; as such, Defendant State of Missouri is not entitled to sovereign immunity herein.

99. Carl's death was a foreseeable result of the actions/inactions of Defendant, in that it was foreseeable that an individual with developmental disabilities might suffer harm, including lethal harm, when not supervised or inadequately supervised as described above.

100. Defendants knew or reasonably should have known that the aforementioned actions and/or inactions created a foreseeable risk of injury of the kind sustained by Carl and Plaintiffs.

101. Plaintiffs' and Carl's injuries directly resulted from Defendants actions and/or inactions, and directly resulted from the dangerous condition of property.

102. On information and belief, Defendant Second Homes, Defendant Rowden, and/or Defendant Unknown Homes placed Carl into the container that was ultimately encased in concrete and placed into the locked storage unit.

103. On information and belief, Defendant Second Homes, Defendant Rowden, and/or Defendant Unknown Homes allowed Carl's body to decompose in the locked storage unit for several months without informing anyone, let alone Plaintiffs.

104. Plaintiffs are Carl's next-of-kin for the purposes of § 194.119, RSMo.

105. Defendant Second Homes, Defendant Rowden, and/or Defendant Unknown Homes deprived Plaintiffs the opportunity to control the final disposition of Carl's remains.

106. As a direct and proximate result of Defendants' actions and/or inactions as set forth above, and the resulting death of Carl Lee DeBrodie, Plaintiffs have sustained damages.

- a. Carl's loss of life;
- b. Loss of companionship and society;
- c. Loss of support;
- d. Loss of services;
- e. Loss of counsel; and
- f. Carl's pain and suffering prior to his death.

COUNT I – WRONGFUL DEATH
RES IPSA LOQUITUR
(Against all Defendants)

107. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

108. Defendants' negligent acts and/or omissions as described above were direct and proximate cause of Carl's injuries and death.

109. The injury and resulting death of Carl, who was a resident and at all times under the care and supervision of TCM Providers, was the kind of event which ordinarily

occurs due to someone's negligence or ordinarily does not occur in the absence of negligence.

110. Furthermore, there are attendant circumstances from which it can be reasonably inferred that Carl's death was the result of the TCM Providers' negligence; Carl was found encased in concrete in a locked storage unit, and his absence went unreported for several months.

111. Carl was under the sole supervision and care of the TCM Providers during the entirety of the time during which he was to be supervised.

112. Plaintiffs lack knowledge of the TCM Providers' specific acts of negligence causing this unusual occurrence, and the TCM Providers have superior knowledge or access to information as to the cause of Carl's death.

113. Although Defendants knew of Carl's developmental disabilities, the TCM Providers negligently failed to properly supervise Carl and ensure for his health and safety. As a direct and proximate cause of Defendants' failures, Carl passed away died from unknown causes.

114. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered actual damages.

115. As a further direct and proximate result of the negligence of Defendants as set forth above and the resulting death of Carl, Plaintiffs have sustained the following damages:

- a. Carl's loss of life;
- b. Loss of companionship and society;
- c. Loss of support;
- d. Loss of services;
- e. Loss of counsel; and
- f. Carl's pain and suffering prior to his death.

116. The deprivation Carl suffered was the result of intentional acts or omissions which caused physical injury and death to Carl, or was the result of willful and wanton conduct or conduct that was in reckless disregard for the rights of Carl. Such conduct justifies the imposition of punitive damages.

117. The foregoing demonstrates the aggravating circumstances surrounding the care and death of Carl DeBrodie.

118. Defendants' acts were outrageous and demonstrate a complete and reckless disregard for the rights of Carl DeBrodie and the Plaintiffs sufficient to constitute aggravating circumstances justifying the imposition of exemplary damages.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, and consequential damages; aggravating circumstances, exemplary, and punitive damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

COUNT II – CIVIL RIGHTS VIOLATION PURSUANT 42 U.S.C. § 1983
VIOLATION OF FIFTH AND/OR FOURTEENTH AMENDMENT TO
UNITED STATES CONSTITUTION

Due Process, Right to Life and Bodily Integrity

(Against Defendants Second Chance, Rowden, Paulo, Allen, Stinger, Huhn, Witcig, Volner, Davis, CCSS, Kaufmann, Unknown Homes, Unknown Public Administrator, Unknown DMH, and Unknown CCSS)

119. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

120. Defendants Second Chance, Rowden, Paulo, Allen, Stinger, Huhn, Witcig, Volner, Davis, CCSS, Kaufmann, Unknown Homes, Unknown Public Administrator, Unknown DMH, and Unknown CCSS are “persons” for the purposes of a § 1983 action for damages.

121. At all times material hereto, Defendants Second Chance, Rowden, Paulo, Allen, Stinger, Huhn, Witcig, Volner, Davis, CCSS, Kaufmann, Unknown Homes, Unknown Public Administrator, Unknown DMH, and Unknown CCSS’s actions and/or inactions were taken under the color of authority and laws of the State of Missouri.

122. In late 2016 and/or early 2017, Defendants Second Chance, Rowden, Paulo, Allen, Stinger, Huhn, Witcig, Volner, Davis, CCSS, Kaufmann, Unknown Homes, Unknown Public Administrator, Unknown DMH, and Unknown CCSS violated Carl’s constitutional rights in, among others, failing to properly supervise Carl, the residents of the Facility, the employees of the Facility, and individuals performing targeted case management for Carl; failing to make mandated, non-discretionary monthly face-to-face

visits with Carl; failing to make quarterly face-to-face visits with Carl; failing to have policies and procedures in place to ensure that such face-to-face visits could not be fabricated; and fabricating records and logs to indicate such contacts had been made.

123. Defendants Second Chance, Rowden, Paulo, Allen, Stinger, Huhn, Witcig, Volner, Davis, CCSS, Kaufmann, Unknown Homes, Unknown Public Administrator, Unknown DMH, and Unknown CCSS's conduct put Carl at risk of serious, immediate, and proximate harm, including death.

124. As a direct and proximate result of Defendants Second Chance, Rowden, Paulo, Allen, Stinger, Huhn, Witcig, Volner, Davis, CCSS, Kaufmann, Unknown Homes, Unknown Public Administrator, Unknown DMH, and Unknown CCSS's conduct, Plaintiffs were injured and suffered damages, including:

- a. The deprivation of Carl's constitutional rights;
- b. The humiliation, degradation, public ridicule, loss of personal reputation, and emotional distress suffered by Carl;
- c. The present worth or value of the estate which Carl would reasonably be expected to have saved and accumulated as a result of his efforts between the time of his premature death and the end of his natural life, had he lived;
- d. The death and funeral expenses, as well as interest on the cost of said expenses for the period between the date of Carl's premature death and the date on which he could have been expected to die;

- e. The physical and mental pain and suffering of Carl DeBrodie;
- f. The present value of loss of services and support;
- g. All consequential damages;
- h. All actual and compensatory damages, including but not limited to, past and present pain and suffering and medical expenses; and
- i. Any other damages allowed by federal or state law, including but not limited to reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein, including reasonable attorney's fees under 42 U.S.C. § 1988; and for such other and further relief as the Court deems just and proper in the premises.

COUNT III – CIVIL RIGHTS VIOLATION PURSUANT TO 42 U.S.C. § 1983
VIOLATION OF FIFTH AND/OR FOURTEENTH AMENDMENT TO
UNITED STATES CONSTITUTION

Due Process, Right to Life and Bodily Integrity
 (Against Defendants Second Chance, Rowden, Allen, Stinger, Huhn, Witcig, Volner,
 Davis, CCSS, Kaufmann)

125. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

126. These Defendants are responsible for establishing, maintaining, enforcing, and/or training regarding the official policies, procedures, practices, patterns, and/or customs of the Missouri Department of Mental Health, Division of Developmental

Disabilities; Callaway Public Administrator's Office; and Callaway County Special Services; and Second Chance Homes, LLC, for the monitoring, supervising, and otherwise ensuring the health and safety of individuals with developmental disabilities, including but not limited to: how an individual is supposed to conduct monthly face-to-face contacts with individuals with developmental disabilities; how an individual is supposed to report instances of non-contact; establishing safeguards so that months do not transpire in which face-to-face contacts with an individual with developmental disabilities do not occur; how an individual is to verify reports of face-to-face contacts with individuals with developmental disabilities; and how a supervisor is to audit reports of face-to-face contacts.

127. These Defendants, deliberately and with reckless disregard for the constitutional rights of people or persons with developmental disabilities receiving targeted case management services, failed to establish adequate and sufficient policies and procedures for training supervisors and case workers to safely effectuate the proper provision of targeted case management services, including but not limited to how an individual is supposed to conduct monthly face-to-face contacts with individuals with developmental disabilities; how an individual is supposed to report instances of non-contact; establishing safeguards so that months do not transpire in which face-to-face contacts with an individual with developmental disabilities do not occur; how an individual is to verify reports of face-to-face contacts with individuals with

developmental disabilities; and how a supervisor is to audit reports of face-to-face contacts.

128. The actions and inactions of Defendants Second Chance, Rowden, Paulo, Allen, Stinger, Huhn, Witcig, Volner, Davis, CCSS, Kaufmann, Unknown Homes, Unknown Public Administrator, Unknown DMH, and Unknown CCSS resulted from the training, or lack thereof, they received in implementing and/or executing the policies, procedures, patterns, statements, regulations, decisions, customs, and/or practices established, maintained, enforced, and/or adopted by these Defendants.

129. These Defendants' respective policies, patterns, practices, and/or customs were a moving force behind, and effectively caused, Plaintiffs' injuries and damages.

130. As a direct and proximate result of these Defendants' conduct, Plaintiffs were injured and suffered damages, including:

- a. The deprivation of Carl's constitutional rights;
- b. The humiliation, degradation, public ridicule, loss of personal reputation, and emotional distress suffered by Carl;
- c. The present worth or value of the estate which Carl would reasonably be expected to have saved and accumulated as a result of his efforts between the time of his premature death and the end of his natural life, had he lived;

- d. The death and funeral expenses, as well as interest on the cost of said expenses for the period between the date of Carl's premature death and the date on which he could have been expected to die;
- e. The physical and mental pain and suffering of Carl DeBrodie;
- f. The present value of loss of services and support;
- g. All consequential damages;
- h. All actual and compensatory damages, including but not limited to, past and present pain and suffering and medical expenses; and
- i. Any other damages allowed by federal or state law, including but not limited to reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein, including reasonable attorney's fees under 42 U.S.C. § 1988; and for such other and further relief as the Court deems just and proper in the premises.

COUNT IV – CIVIL RIGHTS VIOLATION PURSUANT TO 42 U.S.C. § 1983
VIOLATION OF FIFTH AND/OR FOURTEENTH AMENDMENT TO
UNITED STATES CONSTITUTION
Due Process, Right to Life and Bodily Integrity
(Against Defendants Callaway County, Public Administrator, DMH, DMH-DD,
Community Operations, Central Office, CMRO, and CCSS)

131. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

132. These Defendants are governmental bodies that operate through their respective individual employees and agents, and who are “persons” for the purposes of a § 1983 action for damages.

133. At all times relevant herein, on information and belief, these Defendants did not have a policy, procedure, or custom in place whereby reports of mandated, monthly face-to-face contacts could be audited and/or verified by an individual other than the one making the report.

134. These Defendants knew or should have known that situations could arise where, as here, required monthly face-to-face contacts with individuals with developmental disabilities were being reported as completed, but the contacts had in fact not been completed.

135. The need to have a policy or custom in place for the auditing and verification of mandated, monthly face-to-face contacts with individuals with developmental disabilities is obvious, and the inadequacy of existing practice was and is likely to result in the violation of constitutional rights of individuals with developmental disabilities, such that these Defendants can be said to be deliberately indifferent to the needs of individuals with developmental disabilities who cannot ensure for their own safety and well-being.

136. As a direct and proximate result of these Defendants’ conduct, Carl suffered an untimely and premature death.

137. As a direct and proximate result of these Defendants' conduct, Plaintiffs have been damaged.

138. Based on the foregoing acts and/or omissions, all of which were recklessly indifferent, wanton, and malicious, Plaintiffs should be awarded punitive damages so as to punish these Defendants, and to deter like conduct in the future.

139. As a direct and proximate result of these Defendants' conduct, Plaintiffs were injured and suffered damages, including:

- a. The deprivation of Carl's constitutional rights;
- b. The humiliation, degradation, public ridicule, loss of personal reputation, and emotional distress suffered by Carl;
- c. The present worth or value of the estate which Carl would reasonably be expected to have saved and accumulated as a result of his efforts between the time of his premature death and the end of his natural life, had he lived;
- d. The death and funeral expenses, as well as interest on the cost of said expenses for the period between the date of Carl's premature death and the date on which he could have been expected to die;
- e. The physical and mental pain and suffering of Carl DeBrodie;
- f. The present value of loss of services and support;
- g. All consequential damages;

- h. All actual and compensatory damages, including but not limited to, past and present pain and suffering and medical expenses; and
- i. Any other damages allowed by federal or state law, including but not limited to reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein, including reasonable attorney's fees under 42 U.S.C. § 1988; and for such other and further relief as the Court deems just and proper in the premises.

COUNT V – NEGLIGENCE
(All Defendants)

140. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

141. Defendants owed a duty to Carl DeBrodie to ensure and promote his safety and well-being while he lived at the Facility and was under the care of these Defendants.

142. Defendants owed duties to follow certain statutes and regulations, more specifically described above and applicable to the provision of targeted case management services for individuals with developmental disabilities, including Carl.

143. Defendants breached their duties through their:

- a. Failure to adequately supervise Carl;

- b. Failure to make monthly face-to-face visits with Carl, said visits being non-discretionary tasks;
- c. Failure to give Carl sufficient and proper attention, despite their knowledge of Carl's developmental disabilities and tendencies;
- d. Failure to adequately supervise the Facility's other residents, despite their knowledge of Carl's developmental disabilities and tendencies;
- e. Failure to supervise Defendant Second Chance and its employees;
- f. Failure to implement and enforce rules and procedures with regard to how the Facility's residents' health and safety would be monitored;
- g. Failure to implement and enforce rules and procedures with regard to reporting absences of residents in the Facility;
- h. Failure to hire sufficient personnel to maintain adequate supervision and ensure the safety of the Facility's residents, including Carl;
- i. Failure to hire adequately trained and/or certified individuals charged with the care and supervision of residents of the Facility, including Carl;
- j. Negligently permitting Carl to be exposed to the dangers and risks of the Facility and its condition, without providing adequate or sufficient safeguard for Carl; and
- k. Failure to adequately train individuals charged with the care of individuals with developmental disabilities at independent residential facilities.

144. As a direct and proximate result of Defendants' negligent acts and/or omissions as described herein, Carl suffered an untimely and premature death.

145. As a direct and proximate result of Defendants' negligent acts and/or omissions as described herein, Plaintiffs have been damaged.

146. Said Defendants' acts and/or omissions, as described herein, were reckless and outrageous and subjected Carl to an unreasonable risk of harm—which resulted in his untimely death—such that an award of punitive damages to Plaintiffs is warranted by said conduct.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual and compensatory damages; aggravating circumstances damages; exemplary and punitive damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

COUNT VI – CIVIL CONSPIRACY PURSUANT TO
42 U.S.C. § 1983, 42 U.S.C § 1985, AND 42 U.S.C. § 1986
(Against Defendants Second Chance, Rowden, Paulo, Unknown Homes, Allen,
Unknown Public Administrator, CCSS, Unknown CCSS)

147. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

148. At all times material hereto, these Defendants' actions were made under the color and authority of the laws of the State of Missouri.

149. These Defendants, through either express or implicit agreement, entered into a conspiracy.

150. The intent of the conspiracy was to deprive the Plaintiffs, either directly or indirectly, or their civil rights.

151. The purpose of the Defendants' individual and combined efforts to cover up the fact and cause of Carl's death while in the Facility and under the care of these Defendants, was to deprive the Plaintiffs of their constitutional rights, including but not limited to their right to seek redress for their grievances through the courts, right to equal protection under the law, and right to due process of law.

152. The words and actions of these Defendants constitute overt acts and were said and done in furtherance of a conspiracy, including but not limited to the encasing of Carl in concrete, the months of failing to make face-to-face visits with Carl, the submission of fabricated reports indicating said face-to-face visits were being made, status reports submitted in Carl's probate case, and the continued receipt of state and federal monies following Carl's untimely death.

153. These Defendants each had actual knowledge of the conspiracy, the power to prevent or aid in the prevention of the conspiracy, and neglected or refused to prevent the conspiracy.

154. As a direct and proximate result of Defendants' illegal and unjustified conduct, the Plaintiffs were injured and are entitled to recover:

- a. Actual, compensatory, consequential, and all other allowable damages against Defendants in an amount as yet to be determined;

- b. Plaintiffs' costs in this action, including reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988;
- c. Punitive damages; and
- d. Such relief as the Court deems just and equitable.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein, including reasonable attorney's fees under 42 U.S.C. § 1988; and for such other and further relief as the Court deems just and proper in the premises.

COUNT VII – CIVIL CONSPIRACY

(Against Defendants Second Chance, Rowden, Paulo, Unknown Homes, Allen,
Unknown Public Administrator, CCSS, Unknown CCSS)

155. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

156. These Defendants, having a unity of purpose, common design, and/or understanding or meeting of the minds, entered in a conspiracy to unlawfully cover-up the facts and details of the Carl DeBrodie's death while living at the Facility.

157. The purpose of Defendants' conspiracy was, through an individual and combined effort to cover-up the cause of Carl's death while living at the Facility, to deprive the Plaintiffs of their constitutional rights, including but not limited to their right

to seek redress for their grievances through the courts, right to equal protection under the law, and right to due process of law.

158. The words and actions of these Defendants constitute overt acts and were said and done in furtherance of a conspiracy, including but not limited to the encasing of Carl in concrete, the months of failing to make face-to-face visits with Carl, the submission of fabricated reports indicating said face-to-face visits were being made, status reports submitted in Carl's probate case, and the continued receipt of state and federal monies following Carl's untimely death.

159. As a direct and proximate result of Defendants' illegal and unjustified conduct, the Plaintiffs were injured and are entitled to recover:

- a. Actual, compensatory, consequential, and all other allowable damages against Defendants in an amount as yet to be determined;
- b. Punitive damages; and
- c. Such relief as the Court deems just and equitable.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

COUNT VIII – RIGHT OF SEPULCHER (§ 194.119, RSMo)

(Against Defendants Second Chance, Rowden, Paulo, Unknown Homes, Allen,
Unknown Public Administrator, CCSS, Unknown CCSS)

160. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

161. Plaintiffs are “next-of-kin” pursuant to § 194.119, RSMo, and as such, were entitled to direct the final disposition of Carl’s body.

162. These Defendants, through their mistreatment of Carl’s body and interference with the internment process as more specifically described herein, interfered with Plaintiffs’ right to direct the final disposition of Carl’s body.

163. Plaintiffs suffered injuries and, including mental anguish and funeral expenses.

164. These Defendants’ conduct as described herein was reckless, outrageous, and wanton, such that an award of punitive damages to Plaintiffs is warranted in order to punish Defendants and deter like conduct from Defendants and others in the future.

165. As a direct and proximate result of Defendants’ illegal and unjustified conduct, the Plaintiffs were injured and are entitled to recover:

- a. Actual, compensatory, consequential, and all other allowable damages against Defendants in an amount as yet to be determined;
- b. Punitive damages; and
- c. Such relief as the Court deems just and equitable.

