


Tiki Brown
Clerk of State Court
Clayton County, Georgia
Danielle Davis

IN THE STATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

JOHN GOLDEN, as Sole Heir (Next
Friend) and as Administrator of Estate of
CURLIENE GOLDEN, Deceased

Plaintiff,

v.

GOVERNOR'S GLEN ASSISTED
LIVING COMMUNITY, LLC.; FOREST
PARK, GA REALCO, LLC; CANOPY
LIFESTYLES, LLC.; BIRCHWOOD
HEALTHCARE PARTNERS, LLC;
SOUTHERN GRACE HOSPICE AND
PALLIATIVE CARE, LLC; and JOHN
DOE.

Defendants.

CIVIL ACTION NO: 2019CV01195

Jury Trial Demand

COMPLAINT AND DEMAND FOR TRIAL BY JURY

COMES NOW, Plaintiffs in the above-styled action, and hereby file this Complaint as follows:

1.

On or about the evening of September 4 and morning of September 5, 2018, Curliene Golden (hereinafter "Ms. Golden"), a 94-year-old African-American female was sexually assaulted and / or forcibly raped by an assailant at the Governor's Glen Memory Care Assisted Living, located in Clayton County, Georgia at 5000 Governors Drive, Forest Park, Georgia 30297.

2.

On or about October 20, 2018, Curliene Golden died and is survived by her son, John Golden.

3.

Plaintiff John Golden, as the duly appointed Administrator of the Estate of Curliene Golden, states his intention and desire to bring each and every permissible, proper, and authorized claim for damages under Georgia law; including personal injury, economic, punitive, and other damages as proven by the evidence at trial.

4.

In this action, Plaintiff John Golden shows that the Defendants' violations of federal and state law and regulations in the operation of a long-term care facility, negligence per se, professional negligence, simple negligence and breach of contract in the provision of assisted living care, treatment and services led directly and proximately to severe and life-threatening injuries, illness, pain, suffering, and the death of Curliene Golden. At all times material to this lawsuit, Ms. Golden received care, treatment and supervision while residing at Governor's Glen Assisted Living which is located in Clayton County, Georgia. Plaintiff, individually as the surviving son of Curliene Golden and in his capacity as the Administrator of the Estate of Curliene Golden, therefore seeks damages to recover upon claims arising under tort and contract

5.

Defendant Governor's Glen Assisted Living Community LLC (hereinafter "Defendant(s)" or Governor's Glen Assisted Living") is a domestic limited liability company organized under the laws of Georgia and is registered with the Georgia Secretary of State's Office to transact business in Georgia and is therefore subject to the jurisdiction of this Court. Defendant Governor's Glen Assisted Living may be served with process through its registered agent, Carmen Akins, at 5000 Governors Glen Drive, Forest Park, Georgia 30297, Clayton County.

6.

Jurisdiction is proper as to Defendant Governor's Glen Assisted Living.

7.

Defendant Forest Park, GA RealCo, LLC (hereinafter "Defendant(s) or Forest Park RealCo") is a Delaware Corporation with its principal office in Chicago, Illinois. It is subject to the jurisdiction of this Court in accordance with O.C.G.A. § 9-10-91. This Defendant owns, operates, and/or manages a skilled assisted living facility called Governor's Glen Assisted Living in Jonesboro, Clayton County, Georgia. It may be served with process by serving its registered agent, Corporation Service Company, 40 Technology Pkwy South, #300, Norcross, Georgia, 30092, Gwinnett County.

8.

Jurisdiction is proper as to Defendant Forest Park RealCo.

9.

Defendant Canopy Lifestyles, LLC (hereinafter "Defendant(s)" or "Canopy Lifestyles") is a domestic limited liability company subject to the jurisdiction of this Court. This Defendant owns, operates, and/or manages a skilled assisted living facility called Governor's Glen Assisted Living in Jonesboro, Clayton County, Georgia. It may be served with process through its registered agent, Dennis Stamey-Lucas, 125 Church Street, Ste.305, Marietta, GA 30060, Cobb County.

10.

Jurisdiction is proper as to Defendant Canopy LifeStyles.

11.

Defendant Birchwood Healthcare Partners, LLC (hereinafter "Defendant(s) or Birchwood Healthcare") is an Illinois Corporation with its principal office in Chicago, Illinois. It is subject to

the jurisdiction of this Court in accordance with O.C.G.A. § 9-10-91. This Defendant owns, operates, and/or manages a skilled assisted living facility called Governor's Glen Assisted Living in Jonesboro, Clayton County, Georgia. It may be served with process by serving its registered agent, Illinois Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, IL 62703, Sangamon County; via the Georgia Secretary of State.

12.

Jurisdiction is proper as to Defendant Birchwood Healthcare.

13.

Upon information and belief, Defendant John Doe is a Georgia resident and subject to the jurisdiction of this Court.

14.

Defendant Southern Grace Hospice and Palliative Care, LLC is a domestic limited liability company organized under the laws of Georgia and is registered with the Georgia Secretary of State's Office to transact business in Georgia and is therefore subject to the jurisdiction of this Court. Defendant Southern Grace Hospice may be served with process through its registered agent, Aubrey Kekiwi, 384 Racetrack Rd., McDonough, GA 30253, Henry County.

15.

Jurisdiction is proper as to Defendant Southern Grace Hospice.

16.

Plaintiff John Golden is the son of Curliene Golden, deceased. Plaintiff seeks to recover upon Ms. Golden's individual claims against Defendants arising in tort and contract in his individual capacity as next friend and in his capacity as the Administrator of his mother's estate.

17.

Defendant entities known as Governor's Glen Assisted Living Community LLC; Forest Park, GA RealCo, LLC; Canopy Lifestyles, LLC; and Birchwood Healthcare Partners, LLC (Collectively "Defendants") own, operate, and/or manage a long-term skilled nursing care facility called Governor's Glen Assisted Living, located at 5000 Governor's Drive, Jonesboro, Georgia 30297. Defendant Southern Grace Hospice was charged with assisting Governor's Glen in providing care to Curliene Golden. Defendant entities were contractually charged with responsibility for the provision of residence, care, treatment and convalescent/rehabilitation services to Ms. Curliene Golden. Defendants negligently failed at their responsibilities as described below.

FACTS

18.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

19.

In January 2016, Curliene Golden was admitted to Governor's Glen Memory Care Assisted Living Community located at 5000 Governors Glen Drive, Forest Park, Georgia 30297 in Clayton County (hereinafter "the Facility").

20.

At all times relevant to this Complaint, the Facility was owned, operated, managed or controlled by one or more of Defendants.

21.

At all times relevant to this Complaint, Ms. Golden was Defendants' invitee and a lawful invitee and resident at Defendants' Facility.

22.

On or about a time between the evening of September 4 and morning of September 5, 2018, Ms. Golden was sexually assaulted and /or forcibly raped.

23.

On or about a time between the evening of September 4 and morning of September 5, 2018, Ms. Golden was forcibly raped by Defendant John Doe.

24.

On or about the evening of September 4 and morning of September 5, 2018, Ms. Golden was sexually assaulted by Defendant John Doe.

25.

At all times material to the allegations in this Complaint, including the time between the evening of September 4 and morning of September 5, 2018, Plaintiff was Defendants' invitee and a lawful invitee on the Premises.

26.

Upon information and belief, Defendant John Doe is or was employed by Defendants.

27.

Upon information and belief, Defendant John Doe's identity is known to Defendants.

28.

Upon information and belief, Defendant John Doe was not an employee of Defendants, but Defendants were responsible for keeping Ms. Golden safe from Defendant John Doe at Defendants Facility.

29.

At the time of the incident in questions, Ms. Golden was unable to ambulate and was unable to verbally communicate. She used a visual board for communication.

30.

At the time of the incident in questions, Ms. Golden was not able to verbally communicate or scream out for help. For the most part, Ms. Golden used a visual board for communication.

31.

At or around nine-thirty am on September 5, 2015, Ms. Golden expressed that she was experiencing pain in her vaginal and buttocks area to an on-duty hospice care employee. After being informed by Ms. Golden, the hospice care employee checked the area and observed a semen-like or other fluid substance in Ms. Golden's pull-up type undergarment.

32.

Upon further inquiry, Ms. Golden indicated to the hospice care employee on duty that someone hurt her vaginal and buttocks area.

33.

Rather than immediately contacting the police, there was a delay between the time the Hospice Nurse discovered evidence of the rape and/or sexual assault, and the time reported to the police.

34.

Rather than immediately contacting the next of kin (Mr. Golden), the Defendant facility allowed a long delay to expire prior to making a report about Ms. Golden.

35.

Upon information and belief, the delay of contacting the police caused further pain and suffering on behalf of Ms. Golden

36.

Upon information and belief, the delay of contacting and relaying the known information to Mr. Golden caused damage and minimized the opportunity to provide assistance to Ms. Golden.

37.

Ms. Golden was eventually transported to Southern Regional Hospital and then to Southern Crescent Sexual Assault and Child Advocacy Center in Hampton, Georgia (hereinafter “Southern Crescent”).

38.

Southern Crescent is a facility specializing in performing forensic medical examinations and evidence collecting for victims of sexual assault.

39.

During the forensic medical examination, Ms. Golden made numerous statements confirming her earlier allegations of being sexually assaulted and/or being raped.

40.

The forensic medical examination performed on Ms. Golden on September 5, 2018 at Southern Crescent revealed evidence consistent with Ms. Golden’s allegation of sexual assault.

41.

The forensic medical examination performed on Ms. Golden on September 5, 2018 at Southern Crescent revealed evidence consistent with Ms. Golden's allegation of rape.

42.

Upon evidence and belief, the forensic medical examination could have revealed further evidence of the sexual assault if one or more of the Defendants had acted without delay upon the initial discovery of an assault and/or rape of Ms. Golden on the morning of September 5, 2018. Such actions or inaction by one or more of the Defendants caused further damages, pain and suffering to Ms. Golden.

COUNT I: NEGLIGENCE

43.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

44.

One or more Defendants were aware or should have been aware that the criminal activity in the area of the Governor's Glen Facility was such that security was required to protect the residence.

45.

One or more Defendants knew the residence of the memory unit inside the Governor's Glen Facility, wherein Ms. Golden was one such resident, required security measures which one or more Defendants negligently failed to provide.

46.

One or more Defendants negligently allowed Defendant John Doe access to the Premises and its residents, including Ms. Golden.

47.

One or more Defendants had actual or constructive knowledge that Defendant John Doe had committed other offenses on the Premises in the preceding months.

48.

Defendants did not have an adequate, if any, system to verify the identities of individuals having access to patients residing at the Premises.

49.

Defendants did not have an adequate, if any, system to ensure that the individuals who had access to residents at the Premises did not pose a threat.

50.

One or more Defendants had actual knowledge that Defendant John Doe should not have had access to patients residing at the Premises.

51.

Defendants had inadequate systems in place to protect Ms. Golden from Defendant John Doe.

52.

As a direct and proximate result of One or more Defendants' negligence, Ms. Golden sustained serious injuries at the Premises.

53.

Ms. Golden, prior to the time in question, was rendered to a physical condition such that she was totally dependent on others to move her from any location to another, including total dependence on others to have her utilize the restroom facilities.

54.

Ms. Golden was a completely innocent victim and exercised ordinary care and diligence at all times herein and under the circumstances then existing; including the fact she could not physically move or otherwise defend herself from would-be attackers.

COUNT II: NEGLIGENT SECURITY

55.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

56.

Prior to September 5, 2018, the Premises were subject to one or more of the following conditions: negligently maintained, negligently inspected, negligently secured, negligently patrolled and negligently managed. One or more Defendants had knowledge, of the aforementioned, but failed to exercise ordinary care.

57.

Defendants had actual or constructive knowledge of an unreasonable risk for Ms. Golden (or other residents) to become the victim of the alleged crime(s) based on the crime in the area.

58.

Defendants had actual or constructive knowledge of an unreasonable risk of such crime occurring as suffered by Ms. Golden based on factors in addition to the level of the crime in the area.

59.

Defendants had actual or constructive knowledge of an unreasonable risk of such crime occurring as suffered by Ms. Golden based on factors other than the level of the crime in the area.

60.

There was inadequate security at the Premises when Ms. Golden was sexually assaulted and / or forcibly raped.

61.

There were inadequate personnel at the Premises when Ms. Golden was sexually assaulted and/or forcibly raped.

62.

Defendants negligently failed to maintain adequate personnel to permit proper use of the Premises, thereby causing an unreasonable risk of injury to their invitees, including Ms. Golden.

63.

Defendants negligently failed to maintain adequate security to permit safe use of the Premises, thereby causing an unreasonable risk of injury to their invitees, including Ms. Golden.

64.

At all times mentioned herein, one or more of the Defendants controlled the management of the Premises, and had a duty to keep the Premises in a state consistent with due regard for the

safety of their invitees, including Ms. Golden. Defendants breached their said duties and failed to act as similarly situated business in like circumstances or in accordance to statutory mandates.

65.

Defendants knew of, or with the exercise of due care for the safety of their invitees, should have known of the dangerous and hazardous conditions existing on the Premises and the failure to maintain, inspect, secure, patrol, and manage the Premises and that said conditions were likely to result in the type injuries suffered by Ms. Golden.

COUNT III NEGLIGENT TRAINING

66.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

67.

In order to exercise ordinary and reasonable care of Ms. Golden and in keeping the Facility safe, one or more of the Defendants, and/or facility nurses/staff and other agents and employees employed by one or more of the Defendants, had a duty to train employees in following visitor and security protocols.

68.

Defendants negligently failed to do one or more of the following: train employees, train employees and staff to facilitate a reasonable policy, train employees on proper procedure, train employees and staff on a proper system of investigating, train employees and staff on a proper reporting, and train employees and staff on a proper warning of criminal activity and train

employees and staff on a proper maintenance of the Premises, and train employees and staff on providing proper security of the facility.

69.

One or more of the Defendants are liable for at least one of the following: the assault of Ms. Golden, the battery of Ms. Golden, the sexual assault of Ms. Golden, the rape of Ms. Golden, the assault and battery of Ms. Golden. One or more of the aforementioned torts were done without necessity, privilege, or consent.

70.

Because one or more Defendants failed in at least one or more of the following: training employees, security protocols, properly maintaining the facility, or a condition described above (paragraph 56 and 68). Defendants are liable for the negligent supervision, or hiring, or training and retention of their employees or the entrustment of the Premises to their agents and employees. Said negligence was the proximate cause of the injuries of Ms. Golden.

71.

Defendants negligently represented to their invitees that the Premises was properly monitored and secured.

72.

One or more Defendants negligently failed to train employees to provide adequate security, protection, security personnel or a security presence at the Facility.

73.

As a direct and proximate result of One or more of Defendants' negligent acts listed above and below, Defendants are liable because Ms. Golden sustained injuries, conscious pain and

suffering, and ultimately suffered significant injuries including but not limited to sexual assault and forcible rape.

74.

The ordinary and simple negligence of the Defendants, directly and/or by and through the Facility nurses/staff and other agents and employees employed by the Defendants, caused or contributed to Ms. Golden's injuries, pain and suffering, and damages.

75.

The above paragraphs not only were the proximate cause of Ms. Golden's injuries, but also the but-for cause of those injuries.

COUNT IV- VIOLATION OF REQUIREMENTS OF THE GEORGIA BILL OF RIGHTS FOR RESIDENTS OF LONG-TERM CARE FACILITIES AT O.C.G.A. §31-8-100 et seq.

76.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

77.

Governor's Glen Memory Care & Assisted Living Community is a "long-term care facility" as that term is defined under OCGA §31-8-102(3).

78.

The State of Georgia has promulgated the Bill of Rights for Residents of Long-term Care Facilities at OCGA §31-8-100 et seq. which sets out requirements for those providing care, treatment and services to residents of long-term care facilities in this state. In particular, OCGA § 31-8-108(a) requires that residents of long-term care facilities receive care, treatment and services

that are adequate and appropriate and which must be provided with reasonable care and skill and in compliance with all applicable laws and regulations (including those listed in the preceding Count of this complaint), and with respect for the resident's personal dignity, among other requirements.

79.

Pursuant to its authority granted by statute, the Georgia Department of Human Resources has promulgated a number of regulations for the provision of care, treatment and services to residents of long-term care facilities. In particular, GA ADC 290-5-39-.07 requires that each resident be provided with care, treatment and services which are adequate and appropriate for the condition of the resident as determined by the resident's developing care plan. The regulation also requires that services be provided with reasonable care and skill and in compliance with all applicable laws and regulations (including the state laws and federal regulations identified above).

80.

The Defendants violated the provisions of the Georgia Bill of Rights for Residents of Long Term Care Facilities and the regulations of the Georgia Department of Human Resources identified above in all of the acts and omissions that are described in this Complaint for Damages. Among the acts and omissions constituting violation of the Georgia Bill of Rights for Residents of Long Term Care Facilities are the following:

- a) Defendants failed to administer the Assisted Living Facility (nursing facility) in such a way as to use its resources effectively and efficiently to maintain the highest practicable physical, mental and psychosocial well-being of Ms. Golden,

- b) Defendants failed to implement protocols to protect Ms. Golden from sexual assault and/or forcible rape,
- c) Defendants failed to operate and provide services to Ms. Golden in compliance with law and acceptable professional standards and principles that apply to professionals providing said services,
- d) Defendants failed to provide or arrange services for Ms. Golden that met professional standards of quality,
- e) Defendants failed to maintain an adequate nursing staff to provide for Ms. Golden's needs,
- f) Defendants failed to provide properly trained, qualified and competent staff to care for Ms. Golden,
- g) Defendants failed to properly train and supervise the nursing staff to provide the appropriate care, treatment and services that Ms. Golden needed,
- h) Defendants failed to communicate Ms. Golden's medical condition to the authorities,
- i) Defendants failed to provide prompt emergency medical treatment and other medical care to Ms. Golden when she needed it,
- j) Defendants were negligent in all of the acts and omissions described in the above paragraphs.

81.

Pursuant to OCGA §31-8-126(a), the Plaintiff has a cause of action for damages against the Defendants as a result of the Defendants' violations of the rights granted under the Georgia Bill of Rights for Residents of Long Term Care Facilities such as those identified under OCGA

§31-8-108(a).

82.

The Defendants' failure to comply with the Georgia Bill of Rights for Residents of Long Term Care Facilities and the regulations of the Georgia Department of Human Resources set out above led directly to the serious injury, illness, terrible pain, suffering, anguish and grief, and death of Curliene Golden.

83.

As a result of the Defendants' acts and omissions constituting violation of the Georgia Bill of Rights for Residents of Long Term Care Facilities and negligence per se, and the resultant damages and harm, the Plaintiff is entitled to an award of damages in his representative capacity as set out below.

COUNT V - NEGLIGENCE PER SE/VIOLATION OF THE GEORGIA RULES AND REGULATIONS FOR ASSISTED LIVING FACILITY

84.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

85.

Pursuant to O.C.G.A. § 31-8-133, residents of personal care homes in Georgia have been granted certain rights which are enumerated in the regulations promulgated by the Georgia Department of Human Resources at GA ADC 111-8-62.01, et seq.

86.

One or more Defendants, directly and/or through their agents, employees, servants, representatives and successors in interest, have violated the rules and Ms. Golden's rights enumerated in the Georgia Rules of Department of Community Health Chapter 111-8, Healthcare

Regulation Chapter 111-8, Healthcare Facility Regulation Chapter 111-8-63, Rules and Regulations for Assisted Living Communities (hereinafter “Assisted Living Facility Rule and Regulations”).

87.

In particular, but not limited to, Assisted Living Facility Rule and Regulation 111-8-63-.07(2)(b) provides in pertinent part: “the staffing plan that the community utilizes to ensure that staffing ratios increase proportionally as the number of residents who require assisted self-preservation increases.”

88.

Moreover, sufficient staff time shall be available to ensure that each resident is protected from injury.

89.

Assisted Living Facility Rule and Regulation(s) also provide that all persons, including the administrator or on-sight manager, who offer direct care to the residents, shall be responsible for maintaining awareness of each resident’s normal appearance and shall be capable of intervening if a resident’s state of health appears to be in jeopardy.

90.

Assisted Living Facility Rules and Regulations require that the administrator or on-sight manager of a home conduct an interview with the applicant and/or representative or legal surrogate to ascertain that the home can meet the applicant’s needs. Applicants or residents requiring continuous medical or nursing services shall not be admitted or retained. Further, the home shall not retain a resident who needs care beyond which the facility is permitted to provide.

91.

Assisted Living Facility Rules and Regulations require “Each personal care home shall provide room, meals and personal services to the residents of the home which are commensurate with the needs of the individual residents. The personal services shall include 24-hour responsibility for the wellbeing of the residents. Each home shall provide individual residents protective care and watchful oversight including but not necessarily limited to, a daily awareness by the management of resident’s functioning, his or her whereabouts, the making and reminding a resident of medical appointments, the ability and readiness to intervene if a crisis arises for a resident, supervision in areas of nutrition, medication and actual provision of supportive medical services. Personal services shall be provided by the administrator or on-site manager or by appropriately qualified staff designated by the administrator or on-site manager.”

92.

Assisted Living Facility Rules and Regulations require that in case of accident or sudden adverse change in a resident’s condition or adjustment, a home shall immediately obtain needed care.

93.

Assisted Living Facility Rules and Regulations require that every admission agreement shall contain provisions for the administrator or on-site manager’s continuous assessment of the resident’s needs, referral for appropriate services as may be required if the resident’s condition changes, and referral for transfer or discharge if required due to a change in the resident’s condition.

94.

Assisted Living Facility Rules and Regulations require that the residents of the Memory Unit be monitored on a consistent basis.

95.

Assisted Living Facility Rules and Regulations require the immediate reporting of a suspected sexual assault to law enforcement and/or the Department of Community Health.

96.

One or more Defendants failed to comply with all of the above requirements.

97.

One or more Defendants failed to comply with one or more of the above requirements.

98.

Said violations of one or more of the above regulations and rules on the part of One or more Defendants, directly and/or by and through their agents and employees, proximately caused damages to Ms. Golden.

99.

One or more Defendants' violations of said rules and regulations constitutes negligence per se, whether such violation was directly and/or by and through their agents and employees.. As such, Plaintiff is entitled to bring an action for all legal damages as a result of Defendants' violations.

COUNT VI- ORDINARY/SIMPLE NEGLIGENCE

100.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

101.

Defendants, and the Facility nurses/staff and other agents and employees employed by the Defendants, had a duty to exercise ordinary and reasonable care in providing services to Ms. Golden and in keeping the Facility safe.

102.

Defendants negligently failed to maintain a policy, procedure or system of investigating, reporting, and warning of criminal activity which resulted in further damages to Ms. Golden proximately and directly caused by one or more Defendants.

103.

Defendants are liable for the assault, and battery of Ms. Golden. Said assault and battery of Ms. Golden was done without necessity, privilege, or consent.

104.

Because Defendants had knowledge of, or in the exercise of reasonable care, should have had knowledge of the dangerous environment of the Facility. Defendants are liable for the negligent supervision, hiring, training and retention of their employees and the entrustment of the Premises to their agents and employees. Said negligence was the proximate cause of the injuries of Ms. Golden.

105.

Defendants negligently represented to their invitees that the Premises was properly maintained.

106.

Defendants negligently failed to provide adequate security protection, security personnel or a security presence on the Facility despite their representations otherwise.

107.

As a direct and proximate result of Defendants' negligence, Defendants are liable because Ms. Golden sustained injuries, conscious pain and suffering, and ultimately suffered significant injuries including but not limited to sexual assault and forcible rape.

108.

As a direct and proximate result of Defendants' negligence, Defendants are liable because Ms. Golden sustained damages.

109.

The ordinary and simple negligence of the Defendants, directly and/or by and through the Facility nurses/staff and other agents and employees employed by the Defendants, caused and contributed to Ms. Golden's injuries, pain and suffering, and other damages.

110.

The above paragraphs not only were the proximate cause of Ms. Golden's injuries, but also the but-for cause of those injuries.

COUNT VII – NEGLIGENT HIRING, RETENTION AND SUPERVISION

111.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

112.

Defendants owed Ms. Golden a duty to exercise reasonable care in the hiring, training and supervision their employees.

113.

Defendants breached that duty of care in the hiring and/or retention of Defendant John Doe, who was unfit to work in the Facility.

114.

Defendants breached that duty of care in one of the following: (a) the hiring and (b) the retention of Defendant John Doe and (c) the training of Defendant John Doe.

115.

Defendants breached that duty of care in the hiring and/or retention of employees who because of negligent hiring, training or retention failed to protect Ms. Golden from Defendant John Doe.

116.

Defendants knew or in the exercise of ordinary care should have known, of Defendant John Doe's propensity to engage in the type of conduct that caused Plaintiff's injuries. Before hiring John Doe, Defendants did not adequately screen Defendant John Doe to ensure that he did not have a criminal history or propensity toward violent actions, such as the actions he took against Plaintiff.

117.

As a direct and proximate cause to Defendants' negligence in either one or more of: the hiring, supervision and retention of Defendant John Doe, Ms. Golden sustained serious injury.

118.

As a direct and proximate cause of either one or more of Defendant's negligence in the hiring and retention and training employees, Defendants are liable for the damages suffered by Ms. Golden from Defendant John Doe.

119.

As a direct and proximate cause of Defendant's employees' negligent failure to protect Ms. Golden from Defendant John Doe, Defendant is liable for the damages suffered by Ms. Golden.

120.

As a direct and proximate cause of the aforementioned conduct and failures of Defendants, including Defendant John Doe, Ms. Golden suffered serious injuries and incurred medical expenses and other economic damages.

COUNT VIII – ASSAULT/BATTERY

121.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

122.

Defendant John Doe committed the tort of assault, battery, sexual assault and / or rape against Ms. Golden.

123.

Defendants are liable for the actions of its agents and employees directly under the doctrine of respondeat superior.

124.

Defendants had a duty to exercise ordinary care to protect the lives of those elderly residents under their care. Defendants as employers are vicariously liable for the actions of Defendant John Doe.

125.

Because Defendant John Doe was acting within the scope of his employment with Defendants at the time of the battery and sexual assault and /or rape, one or more of Defendants are liable to Plaintiff for the tort of battery and assault.

126.

To the extent John Doe was not an employee or Defendants were not vicariously liable, Defendants are still liable for their failure to provide reasonable security under similar circumstances and when they knew or should have known to provide such security; thus, are liable to Plaintiff for assault battery, sexual assault and /or rape.

127.

As a direct and proximate cause of the aforementioned conduct, Ms. Golden suffered serious injuries and incurred medical expenses and other economic damages.

COUNT IX – PUNITIVE DAMAGES

128.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

129.

Regarding the safety of Ms. Golden, the acts and omissions of the Defendants demonstrate one or more of the following: (a) fraud, (b) intentional misconduct, (c) willful and wanton misconduct, (d) oppression, (e) malice, and (f) a conscious indifference to the consequences. The acts and omissions of one or more of the Defendants were accompanied by aggravating circumstances and/or shocked the conscious and/or were the results of actions that were without regard for the consequences of those actions.

130.

One or more of the Defendants are liable for punitive damages to Ms. Golden.

131.

Punitive damages should be awarded to Plaintiff and against one or more of the Defendants to deter Defendants from repeating the misconduct as described in this Complaint and other such would-be actors.

COUNT X- PROFESSIONAL NEGLIGENCE

132.

Plaintiffs re-alleges paragraphs and incorporates them as though fully set out and incorporated by reference herein.

133.

Curliene Golden entered into a contract with the Governor's Glen for the provision of long-term residence, care, treatment and services at the Defendant assisted living facility, and Defendants failed to provide that care, treatment and service as described herein.

134.

Pursuant to the requirements of O.C.G.A. § 9-11-9.1, the Plaintiff has attached hereto the affidavit of Alfreda Bivins, RN, BSN, MSN who is a Registered Nurse duly licensed to practice nursing by the State of Georgia. Alfreda Bivins has prepared an affidavit which sets forth the Defendants' acts and omissions related to the care, treatment and services provided to Curliene Golden which proximately caused her severe injury, pain and suffering, and hastened her death, and which illustrate Defendants' failure to provide the degree of care and skill required of the Defendants in their professions, as set out below. The Plaintiff hereby incorporates by this reference the entire contents of Alfreda Bivins' affidavit and CV attached hereto as Exhibit "A. The Affidavit is not inclusive of each act, error, or omission that has been committed by Defendants, and Plaintiffs reserve the right to contend and prove additional acts, errors, and omissions on the part of Defendants that reflects a departure from the requisite standard of care required by law.

135.

Pursuant to her education, training and experience, Nurse Bivins is familiar with the guidelines and regulations of long-term care facilities including the requirement to comply with physician's orders, admissions standards and standards to maintain an individual at a facility such as Governor's Glen Assisted Living facility.

136.

Also pursuant to her education, training, and experience, Ms. Bivins is familiar with the proper care of residents who had medical conditions similar to Curliene Golden.

137.

Pursuant to her education, training and experience, Ms. Bivins is fully familiar with the long-term care facility requirements for a resident's physical condition to be monitored and care rendered as ordered.

138.

Pursuant to her education, training and experience, Ms. Bivins is fully familiar with the circumstances under which a resident is in need of the services of a physician for care and treatment following an acute condition change, including the provision of emergency medical care when the resident needs it.

139.

Pursuant to her education, training and experience, Ms. Bivins is fully familiar with the standard of care in a long-term care setting requires staff to prepare proper assessments and care plans for the identification of residents at abuse, neglect, and/or poor safety awareness and to provide proper care for the prevention of the same.

140.

Pursuant to her education, training and experience, Ms. Bivins is fully familiar with the standard of care in a long-term care setting requires staff to recognize significant changes in a resident and initiate a resident's transfer to an acute care center sufficient to meet the resident's needs.

141.

Pursuant to her education, training and experience, Ms. Bivins is fully familiar with the standard of care in a long-term care setting requires staff to obtain immediate emergency or hospital care when the resident's condition requires it.

142.

Defendants also have vicarious liability for the negligent acts and omissions of all persons or entities under Defendants' control either direct or indirect, including its respective employees, agents, and consultants.

143.

As a direct and proximate result of the negligence of Defendants as described herein, Curliene Golden lacked appropriate health care, causing tremendous struggle, pain and suffering and the hastening of her death.

COUNT XI: NEGLIGENCE OF SOUTHERN GRACE HOSPICE

144.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

145.

Defendant Southern Grace Hospice negligently failed to have written criteria for undertaking care of Plaintiff Golden at Governor's Glen facility, in violation of State regulations.

146.

Defendant Southern Grace Hospice negligently failed to abide by their written criteria for undertaking care of Plaintiff Golden at Governor's Glen facility, in violation of State regulations.

147.

Defendant Southern Grace Hospice negligently failed to ensure the type and numbers of personnel necessary to provide appropriate care of Plaintiff Golden at Governor's Glen facility, in violation of State regulations.

148.

Defendant Southern Grace Hospice negligently failed to supervise and implement a care plan and supervision of CNAs providing care for Plaintiff Golden at Governor's Glen facility, in violation of State regulations.

149.

The standard of care in a long-term care setting requires staff to recognize significant changes in a resident and initiate a resident's transfer to an acute care center sufficient to meet the resident's needs.

150.

The standard of care in a long-term care setting requires staff to obtain immediate emergency or hospital care when the resident's condition requires it.

151.

Defendants also have vicarious liability for the negligent acts and omissions of all persons or entities under Defendants' control either direct or indirect, including its respective employees, agents, and consultants.

152.

As a direct and proximate result of the negligence of Defendants as described herein, Curliene Golden lacked appropriate health care, causing tremendous struggle, pain and suffering and hastening of her death.

COUNT XII-BREACH OF CONTRACT

153.

Plaintiffs re-alleges paragraphs and incorporates them as though fully set out and incorporated by reference herein.

154.

One or more of Defendants agreed to care for Ms. Golden in Defendants Governor's Glen care facility, and to provide supervision of Ms. Golden. In exchange for these services, Plaintiff Golden agreed to pay fees to be at the facility.

155.

Ms. Golden entered into a contract for the provision of assisted living care, home health care, treatment and services with Defendants in this action, and pursuant to that agreement Defendants had a duty to exercise ordinary care in the provision of care, safety, treatment and services to Ms. Golden. Defendants failed to exercise reasonable care with respect to the care, treatment and services provided to Ms. Chapman, and she sustained serious injury, pain and suffering and hastened her death as a result.

156.

In the wrongful acts and omissions described in detail above and in the insufficiency of care, treatment and services outlined herein, one or more of the Defendants failed to provide the contracted services, not limited to maintaining the safety of Ms. Golden, thus breached their part of the agreement and their duty of care to Ms. Golden.

157.

As a proximate and direct result of said failure, Plaintiff John Golden, Individually and as Administrator of the Estate of Curliene Golden, is entitled to recover all amounts paid to obtain

services under the contract and all consequential damages arising therefrom. Ms. Golden was injured and Ms. Golden's injury was caused by the breach. This breach caused damages to Ms. Golden, wherein Plaintiff is entitled to recover for such damages.

COUNT XIII: JOINT ENTERPRISE

158.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

159.

At the time of the negligent acts and omissions and Plaintiffs' resultant injuries and damages described above, Defendants combined their property and labor in a joint undertaking for the provision of residential assisted living and long-term care, treatment and services for a fee. Each had rights of mutual control over the residence, care, treatment and other services provided to Ms. Golden while she was a resident at Governors Glen Memory Care & Assisted Living Community.

160.

By virtue of the foregoing, each of Defendants is liable to Plaintiffs herein for money damages by application of the joint enterprise theory of recovery.

COUNTY XIV: ESTATE'S TORT CLAIMS

161.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

162.

Plaintiffs John Golden, individually as next friend, and as Executor of the Estate of Curliene Golden, deceased, and he prosecutes these claims in that capacity.

163.

As set out above, Ms. Golden sustained grievous injuries, pain, suffering and hasten her death as a direct result of Defendants' acts and omissions which constitute violations of federal and state law, professional negligence, general negligence and negligence per se.

164.

In his capacity as the Administrator of Ms. Golden's estate, Plaintiff is entitled to recover all damages to which Ms. Golden would have been entitled had she survived. As a result of Defendants' wrongful conduct, Ms. Golden incurred medical and related expenses for her care, treatment and services. Ms. Golden also endured untold pain and suffering as a result of Defendants' negligent acts and omissions.

165.

Based on the foregoing, Plaintiff as Administrator of Ms. Golden's estate is entitled to recover from Defendants damages equal to all expenses incurred in the provision of medical care and treatment to Ms. Golden resulting from Defendants' wrongful conduct. Plaintiff is also entitled to recover damages for Ms. Golden conscious pain and suffering resulting from Defendants' wrongful conduct.

DAMAGES

166.

Plaintiffs specifically reasserts and incorporates by reference each and every allegation contained in the above-referenced paragraphs as if fully set forth herein.

167.

As a direct and proximate result of Defendants' negligence, negligence per se, negligent hiring, negligent retention, assault and battery, sexual assault and /or rape, negligence described herein or other negligence; Curliene Golden suffered the following: physical injury, pain and suffering, and/or mental anguish, and/or loss of the enjoyment of life, and/or general damages, and/or pecuniary damages, and/or special damages, and other damages permissible under the laws of the State of Georgia.

168.

As a result of at least one of the following: Defendants' above described negligence, negligence per se, negligent hiring, negligent retention, assault and battery, sexual assault and /or rape, negligence described herein or other negligence; Defendants are liable for all special, compensatory, general, incidental, consequential, economic, and other damages permissible under the laws of the State of Georgia.

WHEREFORE, Plaintiffs pray that:

- (a) Process be issued as provided by law;
- (b) Plaintiff be awarded actual damages in amounts to be shown at trial;
- (c) Plaintiff be awarded all general, special, compensatory, economic, punitive, and other allowable damages in accordance with the enlightened conscience of an impartial jury;

- (d) Plaintiff has a trial by jury of twelve; and
- (e) Plaintiff has such other relief as this Court deems just and proper.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

This 9th day of July, 2019.

Respectfully submitted,

/s/ Terance Madden
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