IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ESTATE OF BETTY O. DAVIS Through Estate Representative Michelle Davis c/o Eadie Hill Trial Lawyers 3100 E. 45th St., Suite 400 Cleveland, Ohio 44127 Plaintiff, vs. EMBASSY OF LYNDHURST AKA EMBASSY LYNDHURST, LLC 1575 Brainard Rd Lyndhurst, Ohio 44124 Also Serve c/o Registered Agent: L & M Statutory Agent, LLC 100 North Main Street, Suite 350 Chagrin Falls OH 44022 and EMBASSY HEALTHCARE, INC. c/o Registered Agent: Eric M. Simon 200 Public Square, Suite 3500 Cleveland, OH 44114 and EMBASSY HEALTHCARE HOLDINGS, INC. c/o Registered Agent: Nicholas Ciccon 25201 Chagrin Blvd., Suite 190 Beachwood, OH 44122 and GSR DYNASTY, LLC c/o Registered Agent: Joseph G. Corsaro 28039 Clemens Road	CASE NO. JUDGE **COMPLAINT** **WITH JURY DEMAND AND AFFIDAVIT OF MERIT ATTACHED**

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Westlake, OH 44145)
)
and)
)
MERI FERRARI, NP)
5700 Darrow Rd)
Suite 106)
Hudson, OH 44236)

Plaintiff, the Estate of Betty O. Davis, its Estate Representative Michelle Davis (Cuyahoga County Probate Court Estate Number 2023EST282802), for this Complaint against the above-named Defendants, states and avers upon information and belief:

INTRODUCTION

1. This action involves multiple claims (negligence, recklessness, wrongful death, Resident's Rights Law violations, civil conspiracy, and fraud) involving Embassy of Lyndhurst aka Embassy Lyndhurst, LLC's ("Facility's") inadequate care of Betty Davis and the corporate control of the facility leading to such inadequate care that led to Betty Davis's untimely and wrongful death on April 04, 2023.

2. This is a wrongful death case against Embassy of Lyndhurst, an Embassy Healthcare facility, for causing Betty Davis to become dehydrated, malnourished, develop infections and a small bowel obstruction which resulted in sepsis and led to her death on April 4, 2023.

3. Plaintiff requests a trial by jury.

4. An Affidavit of Merit is attached.

5. Plaintiff brings this action for compensation for the harms and losses sustained as the result of the negligence, recklessness, conscious disregard, reckless disregard, conduct by which—through heedless indifference to the consequences—the Defendants or their staff disregarded a substantial and unjustifiable risk that the health

care provider's conduct is likely to cause, at the time those services or that treatment or care were rendered, an unreasonable risk of injury, death, or loss to person or property, or intentional misconduct or willful or wanton misconduct, and other wrongful conduct described herein or discovered during litigation.

6. Plaintiff seeks punitive damages in an amount necessary to punish the above-named Defendants and deter the Defendants from engaging in similar conduct in the future, attorneys' fees, and the costs of this litigation.

DEFENDANTS

7. Embassy of Lyndhurst aka Embassy Lyndhurst, LLC is an Ohio corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and does business as Embassy of Lyndhurst aka Embassy Lyndhurst, LLC.

8. Embassy Healthcare, Inc. is an Ohio corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and does business as Embassy of Lyndhurst aka Embassy Lyndhurst, LLC.

9. Embassy Healthcare Holdings, Inc. is an Ohio corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and does business as Embassy of Lyndhurst aka Embassy Lyndhurst, LLC.

10. GSR Dynasty, LLC is an Ohio corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and does business as Embassy of Lyndhurst aka Embassy Lyndhurst, LLC.

11. Embassy of Lyndhurst aka Embassy Lyndhurst, LLC, Embassy Healthcare, Inc., Embassy Healthcare Holdings, Inc., and GSR Dynasty, LLC may be referred to collectively as "Embassy Defendants."

12. The Embassy Defendants employ, manage, and direct the care and service providers who were responsible for Betty Davis's care, treatment, and safety at Embassy of Lyndhurst aka Embassy Lyndhurst, LLC while they were a resident there, and / or are responsible for creating unsafe conditions at the Facility through their control of the Facility management that directly led to Betty Davis's injuries and untimely and wrongful death on April 04, 2023.

13. The Embassy Defendants direct and control operations at the Facility and are therefore directly liable for mismanagement of the Facility without regard to piercing the corporate veil.

14. The Embassy Defendants organizations control the other corporations in a way that is so complete that the corporations have no separate mind, will, or existence of their own, is exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity; and injury or unjust loss resulted to the plaintiff from such control and wrong, meaning the Defendants should be held directly liable for such harms and losses.

15. The Embassy Defendants collectively own, manage, control, and/or are responsible for the care delivered to residents of Embassy of Lyndhurst aka Embassy Lyndhurst, LLC directly or through their domination and control of any putative entity license holder.

16. Meri Ferrari is, and was at all relevant times, a nurse practitioner licensed to provide advanced nursing care in the state of Ohio and who provided care to Ms. Davis during the timeframe when the allegations in this Complaint arose.

VICARIOUS LIABILITY

17. The Embassy Defendants employ the care providers who were responsible for ensuring Betty Davis's care and safety.

18. The Embassy Defendants manage, control, and/or employ the nursing staff at the Facility.

19. Betty Davis and their family looked to the Defendants for care based upon their representations.

20. The Embassy Defendants are vicariously liable for the negligent actions of their employees and agents (respondeat superior and agency liability) and/or independent contractors (Clark v. Southview agency by estoppel), including visiting physicians and nurse practitioners contracted with any of the Defendants and / or provided to residents as default or house care providers.

JURISDICTION AND VENUE

21. This Court has Jurisdiction over Defendants because, among other things, all Defendants do, and all times relevant did, purposefully avail themselves of the laws of the State of Ohio, and/or committed tortious acts within the State of Ohio.

22. Venue is proper in Cuyahoga County, Ohio under Civil Rule 3(B) because, among other reasons: (a) one or more Defendants reside, domicile, or carry on their principal place of business in that county; and (b) part of the claim for relief arose in that county.

COMMON FACTS

23. The Embassy Defendants hold themselves out to the public as providers of long-term nursing home, skilled nursing, and memory care services.

24. The Embassy Defendants' for-profit model means their primary goal is to maximize profit, measured by revenues minus expenses.

25. For nursing homes generally, the largest individual revenue source is residents (filling beds), and the largest individual expense is the cost of employing nursing staff to provide care to those residents. This creates a financial incentive to take on more residents with greater care needs than the nursing staff can properly care for, a violation of federal nursing home regulations regarding staffing levels.

26. The Embassy Defendants manage, control, and / or employ the nursing staff at Facility.

27. The Embassy Defendants exercise actual control over the Facility's management and operations to maximize profits, including control over facility-level:

a. Policies and procedures, including regarding resident care;

b. Finances, including obtaining credit and loans, guaranteeing loans (both at the corporate and individual facility level), maintaining funds and banking, obtaining, owning, and leasing facility land and buildings, and capital expenditures.

c. Budgeting, including controlling the amount of funds available for staffing facilities;

d. Personnel management, including hiring and firing, or having authority to hire and fire, the supervisory and management personnel in each facility;

e. Supervision of management, care providers, and staff in each facility, including compliance with federal and state regulations;

f. Employment, such as setting pay scales, shifts, and time and vacation policies;

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g. Systems for training, monitoring, and supervising staff;

h. Medical record systems and management;

i. Financial control systems, including budgeting and payment processing;

j. Marketing, including setting the image and expectations residents and their family should expect at the facility, and even the name of the facility;

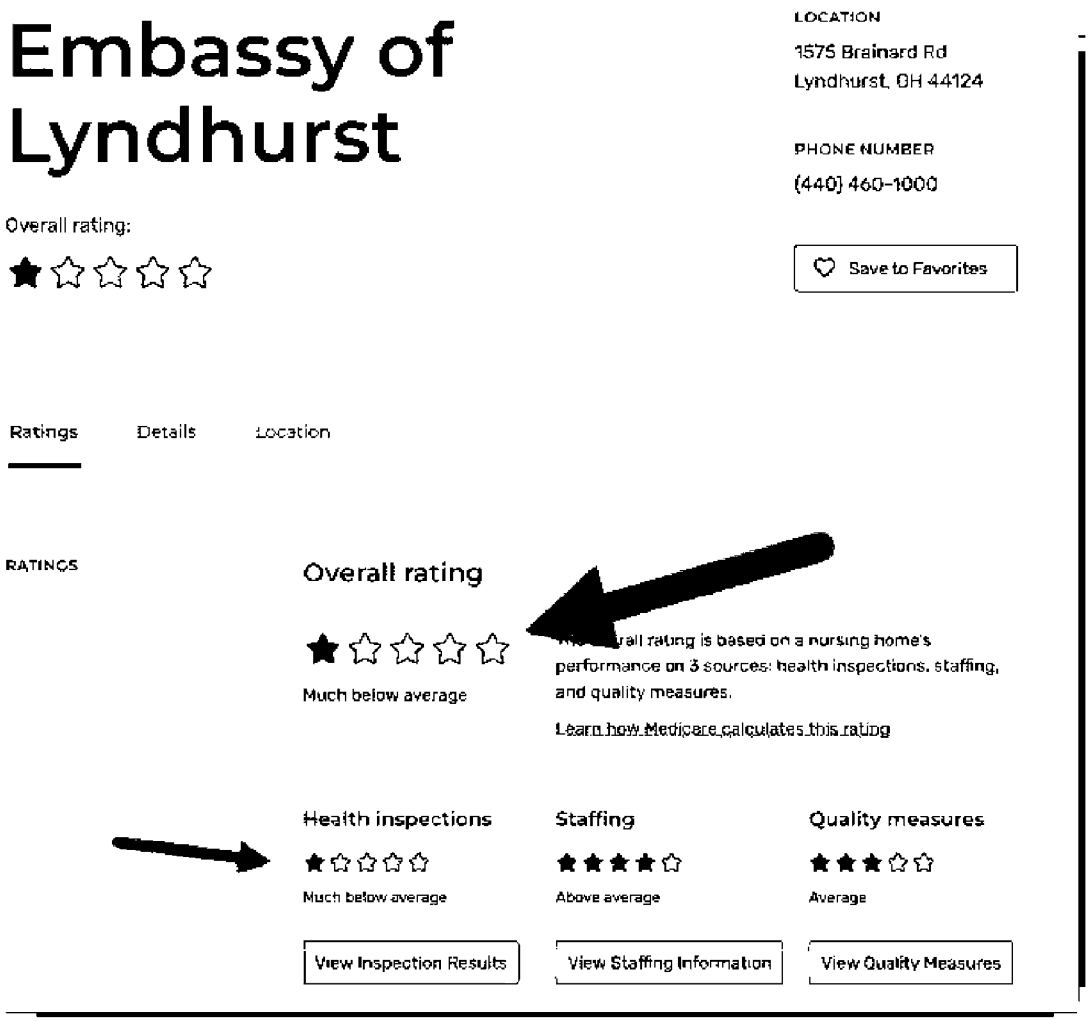
k. Reporting procedures, including reporting to Medicare as to individual resident care and facility-wide issues.

28. As the result of this control, the Embassy Defendants make decisions that affect the day-to-day care of residents of the Facility, such as the resources available for providing nursing staff and care to residents like Betty Davis, meaning they are responsible for the foreseeable harm that results from careless decisions while voluntarily exercising that control.

29. The Embassy Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that the facilities were sufficiently staffed to meet the individual needs of its residents, including Betty Davis.

30. The Embassy Defendants engaged in a systemic practice to understaff the facilities to maximize profits at the expense of its residents' care.

31. The Embassy Defendants' systemic understaffing of the Facility resulted in a "1 star" ("much below average") ranking for Health Inspections on the Medicare.gov Nursing Home Compare website and 1-star overall ranking.



According to the Centers for Medicare and Medicaid, Embassy of Lyndhurst aka Embassy Lyndhurst, LLC earned a 1-star, or "much below average" rating for Health Inspections and Overall rating. This data was taken directly from medicare.gov on February 6, 2024.

32. This lack of sufficient staff directly resulted in Betty Davis not receiving basic and necessary services to prevent, among other things, neglect leading to their injuries and death.

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33. The Embassy Defendants also exercise operational and managerial control, and apply this profits-over-safety model, at the following facilities in the State of Ohio:

a. Embassy of Swanton
Address: 214 South Munson Road, Swanton, OH 43558
Phone Number: 419-825-1145

b. Embassy of Newark
Address: 75 McMillen Dr., Newark, OH 43055
Phone Number: 740-344-0357

c. Embassy of Marion
Address: 175 Community Dr., Marion, OH 43302
Phone Number: 740-387-7537

d. Embassy of Painesville
Address: 70 Normandy Dr., Painesville, OH 44077
Phone Number: 440-363-1030

e. Regent of Lyndhurst
Address: 1555 Brainard Rd., Lyndhurst, OH 44124
Phone Number: 440-684-6614

f. Regent of Euclid
Address: 1 Gateway Drive, Euclid, OH 44119
Phone Number: 216-452-2140

g. Embassy of Euclid
Address: 3 Gateway Drive, Euclid, OH 44119
Phone Number: 216-452-2140

h. Regent of Stow
Address: 3855 Fishcreek Road, Stow, OH 44224
Phone Number: 330-557-8009

i. Embassy of Valley View
Address: 3363 Ragged Ridge Road, Frankfort, OH 45628
Phone Number: 740-998-2948

j. Rockport Retirement Community
Address: 20375 Center Ridge Road, Rocky River, OH 44116
Phone Number: 440-356-5444

k. Embassy of Woodview
Address: 2770 Clime Rd, Columbus, OH 43223
Phone Number: 614-276-8222

l. The Oaks at Shady Lawn
Address: 15028 Old Lincoln Way East, Dalton, OH 44618
Phone Number: 330-828-2278

m. Shady Lawn
Address: 15028 Old Lincoln Way East, Dalton, OH 44618
Phone Number: 330-828-2278

n. Seasons
Address: 456 Seasons Rd, Stow, OH 44224
Phone Number: 330-688-5553

o. Royal Oak
Address: 6973 Pearl Rd, Middleburg Heights, OH 44130
Phone Number: 440-884-9191

p. Embassy of Pickerignton
Address: 1300 Hill Rd, Pickerington, OH 43147
Phone Number: 614-863-1858

q. Parkside
Address: 908 Symmes Rd, Fairfield, OH 45014
Phone Number: 513-868-6500

r. Oak Hills
Address: 3650 Beavercrest Dr, Lorain, OH 44053
Phone Number: 440-282-9171

s. Northridge Health Center
Address: 35990 Westminister Ave, North Ridgeville, OH 44039
Phone Number: 440-327-8511

t. Madison Healthcare
Address: 7600 S Ridge Rd, Madison, OH 44057
Phone Number: 440-428-1492

u. Longmeadow
Address: 565 Bryn Mawr St, Ravenna, OH 44266
Phone Number: 330-839-5042

v. Embassy of Logan
Address: 300 Arlington Ave, Logan, OH 43138
Phone Number: 740-385-2155

w. Embassy of Lebanon
Address: 700 Monroe Rd, Lebanon, OH 45036
Phone Number: 513-932-0105

x. Grande Pavilion
Address: 24613 Broadway Ave, Oakwood Village, OH 44146
Phone Number: 440-439-7976

y. Grande Oaks
Address: 24579 Broadway Ave, Oakwood Village, OH 44146
Phone Number: 440-439-7976

z. Forest Hills Center
Address: 2841 E Dublin Granville Rd, Columbus, OH 43231
Phone Number: 614-891-1111

aa. Crystal Care Center of Ashland
Address: 1251 E Main St, Ashland, OH 44805
Phone Number: 419-281-9595

bb. Carlisle Manor
Address: 730 Hillcrest Ave, Carlisle, OH 45005
Phone Number: 937-746-2662

cc. Embassy of Cambridge
Address: 1471 Wills Creek Valley Drive, Cambridge, OH 43725
Phone Number: 740-439-4437

dd. Autumnwood
Address: 275 E Sunset Dr, Rittman, OH 44270
Phone Number: 330-927-2060

Reporting Data – Nursing Home

34. The Embassy Defendants are required to report significant amounts of data to the federal agency that oversees operations of nursing homes receiving federal or state funding, the Centers for Medicare and Medicaid Services, or "Medicare."

35. The data the Embassy Defendants submit to Medicare regarding its facility includes data on its residents (numbers, care needs, and bed days), its finances, and its nurse and nursing aide staffing levels as compared to resident care needs.

36. This data is certified correct by the Embassy Defendants and / or submitted under penalty of perjury and / or civil or criminal penalties.

37. Medicare uses some of this data submitted by the Embassy Defendants to produce its nursing home 5-star rating system, also known as "Nursing Home Compare."

Nursing Home Resident Care Needs and Staffing Levels (MDS and RUG Scores)

38. Every nursing home receiving Medicare or Medicaid funding—the clear majority of nursing homes, including Embassy of Lyndhurst aka Embassy Lyndhurst, LLC and others operated and / or controlled by the Embassy Defendants—is required to provide detailed information regarding the health status, care and treatment, and services provided to each resident in the facility using a questionnaire called the Minimum Data Set, or MDS. This evaluation is done for all nursing home residents regardless of whether their care is being paid for by Medicare.

39. Nursing homes like Embassy of Lyndhurst aka Embassy Lyndhurst, LLC are required to evaluate every resident using the Minimum Data Set questionnaire shortly after the time of admission, every 90 days thereafter, when a resident has a significant improvement or decline in health (physical, mental, or psychosocial), and upon discharge.

40. Based on this Minimum Data Set, each resident's individual care needs (called "acuity level") are assigned into a group signifying how much nursing or staff care the resident requires, called a Resource Utilization Group score, or RUG score.

41. Each resident's Resource Utilization Group score is contained in Section Z of their Minimum Data Set evaluations, meaning the total care needs of the residents in any facility at a specific time is available by totaling the residents' Resource Utilization Group scores from their Minimum Data Set evaluations.

42. Medicare has commissioned and made available to every nursing home studies and data showing the number of minutes of nursing and nursing aide care a

person at a specific RUG level should be expected to require, which Medicare calls "expected staffing."

43. When these Resource Utilization Group scores are combined for all residents in a nursing home facility, the nursing home knows exactly how many minutes of nursing and nursing aide care should be provided, on average, to meet the expected care needs of their residents.

Misleading Advertising

44. In an effort to persuade the families of patients to become customers, the Embassy Defendants make promises to the families of such potential residents that they will provide a level of care that they know they are incapable of providing.

45. The intent and outcome of this misleading practice is to cause residents, their families, and external care providers to believe the nursing facility is much better staffed to provide the promised care than what is actually the practice of the Embassy Defendants with regard to staffing the Facility.

46. The intent and outcome of this misleading practice is to drastically limit the budget and overhead needed to run a safe facility in order to maximize profits and syphon resources at the expense of patient safety.

Systemic Understaffing and Betty Davis's Care

47. The Embassy Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that Embassy of Lyndhurst aka Embassy Lyndhurst, LLC was sufficiently staffed, and the staff appropriately trained and informed, to meet the individual needs of Betty Davis during the period she was a resident at the facility.

48. The Embassy Defendants engaged in a systemic practice to understaff Embassy of Lyndhurst aka Embassy Lyndhurst, LLC to maximize profits at the expense of its residents' care.

49. This lack of sufficient staff directly resulted in Betty Davis not receiving basic and necessary services, assessments, and interventions to prevent, among other things, neglect leading to their injuries at Embassy of Lyndhurst aka Embassy Lyndhurst, LLC during the period they were a resident at the Facility.

Betty Davis's Care at Embassy of Lyndhurst

50. On October 7, 2022, The Embassy Defendants accepted Betty Davis as a nursing home resident for long-term care due to increased dementia as it was unsafe for her to live at home.

51. The Embassy Defendants agreed to accept Betty Davis into their facility and provide care to them in exchange for monetary payment.

52. The attending nurse practitioner was Meri Ferrari, NP.

53. The Embassy Defendants failed to provide Betty Davis with sufficient fluid intake to maintain proper hydration and health.

54. The Embassy Defendants failed to provide meal assistance to ensure adequate nutrition and hydration.

55. Ms. Davis required 1-person assistance with eating and drinking but there is scant documentation that this ever occurred.

56. The facility had orders (1) to administer laxatives and stool softeners, (2) to listen to (auscultate) bowel sounds and observe for abdominal distension an notify the doctor of any abnormal findings, (3) note BM (bowel movement) color, consistency, amount, and record in the records and notify the doctor of any abnormal findings, and

(4) and begin bowel evacuation if she had not had a bowel movement in 3 days and to notify the doctor.

57. Throughout Ms. Davis' admission at Embassy of Lyndhurst, she was documented as going 3 or more days without a bowel movement on several occasions and at times as many as 6 days, but staff neither initiated the bowel evacuation protocol or notified the physician.

58. Throughout Ms. Davis' stay, Embassy of Lyndhurst failed to document BM (bowel movement) color, consistency, amount, and record in the records and notify the doctor of any abnormal findings.

59. Throughout Ms. Davis' stay, Embassy of Lyndhurst failed to administer laxatives, stool softeners, or other bowel medications as ordered.

60. Throughout Ms. Davis' stay, Embassy of Lyndhurst failed to adequately document BM (bowel movement) color, consistency, amount, and record in the records and notify the doctor of any abnormal findings.

61. Throughout Ms. Davis stay, she had abnormal findings that should have been but were not provided to her physician.

62. On March 4, 2023, Ms. Davis developed nausea and vomiting. At 11:57 pm, an antinausea medication called Promethazine was given intramuscularly.

63. At 7:23 am on March 5, 2023, Ms. Davis again vomited. Three and half hours later, she was given another injection of promethazine.

64. On March 5, 2023, Embassy of Lyndhurst nursing staff documented that the previous dose of promethazine was ineffective for nausea and vomiting. There is no indication that the doctor was notified of this.

65. Meri Ferrari, NP was consulted by nursing staff on March 6, 2023, concerning Ms. Davis' nausea and vomiting.

66. At 12:10 am on March 7, 2023, Ms. Davis was once again noted to have vomited.

67. At 12:18 am, on March 7, 2023, Embassy of Lyndhurst nursing staff documented that Ms. Davis had "dark green emesis (vomit)." There is no indication that the doctor was ever notified.

68. If the doctor was notified, any reasonable provider would have had Ms. Davis sent to the hospital for emergency treatment.

69. On March 7, 2023, Michelle Davis, Ms. Davis' daughter, found her mother unresponsive and informed the staff of her change in condition. At 12:04pm Betty Davis's physician was notified, and she was taken to University Hospitals Ahuja Medical Center. The facility delayed Betty Davis from care by approximately 12-hours by failing to notify her physician of the change of status at 12:18am.

70. Ms. Davis went to Ahuja Medical Center with severe dehydration and bowel obstruction.

71. On March 10, 2023, Betty Davis underwent surgery for an exploratory laparotomy, bowel resection, and peritoneal lavage.

72. On March 16, 2024, Betty Davis developed a significant rectal bleed.

73. On March 18, 2023, Ms. Davis was transferred to hospice. Ms. Davis passed away on April 4, 2023.

74. Ms. Davis's Death Certificate identifies Small Bowel Obstruction (weeks) as the immediate cause of death.

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75. As a direct and proximate result of the Embassy Defendants' violations of the standard of care, Ms. Davis endured physical and mental pain and suffering, unplanned exploratory laparotomy, bowel resection, peritoneal lavage, excessive bleeding, need for hospice, and death.

FIRST CAUSE OF ACTION
(MEDICAL NEGLIGENCE / RECKLESSNESS)

76. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

77. Betty Davis depended on the Embassy Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

78. The Embassy Defendants had a duty to provide proper care and treatment to Betty Davis and to avoid causing injury to Betty Davis.

79. The Embassy Defendants, including their medical and nursing staff, failed to provide proper care and treatment to Betty Davis, which they knew or should have known they required, and their negligence was the direct and proximate cause of the injuries that Betty Davis suffered.

80. The Embassy Defendants' failure to provide proper care and treatment included, but is not limited to:

a. Choosing to put inadequate prevention and response interventions in place to prevent injuries;

b. Choosing to provide inadequate resident observation, supervision, and monitoring;

c. Choosing to provide improper training to staff members regarding resident monitoring, assessment, response, and treatment;

d. Choosing to provide too few, and / or underqualified nursing staff members for resident needs at each facility to protect and provide adequate care to

residents like Betty Davis; Choosing to not provide accurate, adequate, or timely information to Betty Davis's family;

e. Choosing to violate orders relating to care of Betty Davis; Choosing to violate state and federal regulations governing care and staffing levels in nursing home facilities by which residents like Betty Davis are a member of the class of persons intended to be protected from injuries like those they suffered;

f. Failing to ensure the rights and safety of its residents, including Betty Davis, as required by Ohio and federal regulations;

g. Choosing not to provide appropriate care to Betty Davis while they were a resident of the Facility; and

h. Such other acts or omissions described in this Complaint or discovered in litigation.

81. These actions constituted a conscious disregard for Betty Davis's rights and safety with a great probability of causing substantial harm from this misconduct, by which—through heedless indifference to the consequences—the Defendants or their staff disregarded a substantial and unjustifiable risk that the health care provider's conduct was likely to cause, at the time those services or that treatment or care were rendered, constituting an unreasonable risk of injury, death, or loss to person or property, or intentional misconduct or willful or wanton misconduct. The Defendants were aware of the great probability of the harm that could result from their willful, wanton, and/or reckless misconduct.

82. The Defendants' disregard for the rights and safety of residents like Betty Davis created circumstances under which it became substantially certain that serious injuries would result, entitling Plaintiff to awards for compensatory and punitive damages.

83. The Defendants are directly liable for their own willful, wanton, and/or reckless misconduct.

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84. The Embassy Defendants are also vicariously liable for their employees' and agents' willful, wanton, and/or reckless misconduct.

85. The Embassy Defendants and their medical and nursing staff provided care to Betty Davis that fell below the standard of care expected of medical care and nursing home organizations, under the same or similar circumstances.

86. The departures from the standard of care are evidenced by violations of sections of Federal Regulations, 42 C.F.R. § 483 et seq., and Ohio Administrative Code sections, OAC 3701-17 et seq., and the Ohio Resident's Rights Law, R.C. section 3721.13.

87. As a direct and proximate result of the negligent and/or willful, wanton and/or reckless actions of the Defendants described above, Betty Davis sustained permanent injury and loss including, but not limited to, conscious pain and suffering, disability, and death.

88. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars ($25,000.00), for conscious pain and suffering, loss of enjoyment, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the Plaintiff may be entitled to and/or that the court finds is appropriate and/or equitable.

SECOND CAUSE OF ACTION
(WRONGFUL DEATH)

89. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

90. As a direct and proximate result of the negligence / recklessness described above, Betty Davis sustained injuries that caused their untimely and wrongful death.

91. Betty Davis's next-of-kin suffered damages as set forth in the Ohio Wrongful Death statute, R.C. 2125.01 et seq., including mental anguish and grief and loss of Decedent's society and companionship.

92. WHEREFORE, Plaintiff demands judgment against Defendants, in an amount more than $25,000.00 to compensate the decedent's next of kin and heirs at law, together with costs of suit, attorneys' fees and expenses, and any other relief the court finds is appropriate and / or equitable.

THIRD CAUSE OF ACTION
(NURSING HOME RESIDENT RIGHTS VIOLATION R.C. 3721.13)

93. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

94. Defendants, directly or through their employees or agents, violated Betty Davis's rights as a resident of the Defendants' facilities, as enumerated in Ohio Revised Code section 3721.13, including, but not limited to, the right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care.

95. These violations are evidence of negligence and conscious disregard of Betty Davis's rights and safety and give rise to a statutory cause of action.

96. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Betty Davis conscious pain, suffering, and disability, and other harms and lossesincluding death.

97. WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly, in an amount in excess of $25,000.00, together with costs of suit, attorney's fees and

expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and / or equitable.

FOURTH CAUSE OF ACTION
(CIVIL CONSPIRACY)

98. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

99. The Embassy Defendants had an express agreement, mutual understanding, or tacit agreement to, and/or their agents maliciously combined efforts to:

a. defraud residents and their families by delivering wholly inadequate care, contrary to their promises;

b. systemically understaff their facilities in violation of federal regulations, and for the purposes of their own profit, at the expense of resident health and safety;

c. under-capitalize the facilities and syphon money to themselves and related entities for the purposes of their own profit at the expense of resident health and safety;

d. inflate resident RUG levels to obtain excessive and unjustified payments from Medicare and Medicaid while not providing the care paid for with these taxpayer dollars;

e. not provide the level of care, by understaffing the facility, paid for by taxpayer dollars;

f. misrepresenting to Medicare the staffing level of the facility to increase their rating; and

g. as otherwise may be described in the Complaint or learned through discovery.

100. This understanding constitutes a malicious combination to injure residents of the Facility, including Betty Davis.

101. In pursuance of this common plan or design to commit tortious acts, the Embassy Defendants actively took part in it, or furthered it by cooperation or request, or

lent aid or encouragement to the wrongdoers, or ratified and adopted the wrongdoers' acts done for their benefit.

102. The conspiracy caused injury to Betty Davis.

103. WHEREFORE, Plaintiffs demand judgment against the Embassy Defendants, jointly, in an amount in excess of $25,000.00, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and / or equitable.

FIFTHCAUSE OF ACTION
(FRAUD)

104. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

105. The Embassy Defendants concealed facts concerning their staffing levels, pay, and the amount of care they were actually capable of providing at Embassy of Lyndhurst aka Embassy Lyndhurst, LLC.

106. Not only did the Embassy Defendants conceal this information, they publicly and privately represented that they provide exceptional services in an effort to induce the family of Betty Davis and other potential customers to place their loved ones in their care and custody.

107. These inducements were made falsely, with knowledge of their falsity, or with such utter disregard and recklessness as to whether they were true or false that knowledge may be inferred with the intent of misleading Betty Davis's family and other potential customers into placing their loved ones in the care and custody of the Embassy Defendants.

108. Betty Davis's family and the family members of other potential customers reasonably relied on the Embassy Defendants' representations and concealments regarding the degree of care they provide.

109. The result of these inducements and concealments was that Betty Davis's family, and the family of numerous other residents, allowed their loved one to be placed in the Embassy Defendants' facility.

110. As a direct and proximate result of the Embassy Defendants' actions, representations, and concealments, Betty Davis suffered conscious pain and suffering and death.

111. As a direct and proximate result of the Embassy Defendants' action, representations, and concealments, Betty Davis's next-of-kin have experienced harms and losses as a result of their death, including those damages set forth in Ohio's wrongful death statute, Ohio Revised Code section 2125.02 *et seq.*

112. WHEREFORE, Plaintiff demands judgment against the Embassy Defendants, jointly, in an amount in excess of Twenty-Five Thousand Dollars ($25,000.00), together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and/or equitable.

A TRIAL BY JURY IS HEREBY DEMANDED

Respectfully Submitted,

/s/ Michael A. Hill

MICHAEL A. HILL (0088130)
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Counsel for Plaintiff

STATE OF OHIO)
) **AFFIDAVIT OF MERIT**
CUYAHOGA COUNTY)
)
)

Affiant MARK SHOAG, MD, having been first duly sworn, states:

1. I am an adult, have no known disability preventing my truthful testimony, and have personal knowledge of the matters contained within this affidavit.

2. I am a full-time practicing physician in the fields of Geriatric and Internal Medicine, licensed in the state of Ohio, board certified in Internal Medicine, and a medical director of a long-term acute care hospital, spending more than 50% of my professional time providing direct patient care.

3. Through my specialized knowledge, skill, training, experience, and education, I am familiar with the standard of care applicable to the medical and nursing care and treatment that was provided to Betty Davis while a resident of Embassy of Lyndhurst aka Embassy Lyndhurst, LLC.

4. I have reviewed all medical records reasonably available to Estate of Betty O. Davis concerning the allegations contained in the complaint.

5. To a reasonable degree of medical probability, the Defendants Embassy of Lyndhurst aka Embassy Lyndhurst, LLC, Embassy Healthcare, Inc., Embassy Healthcare Holdings, Inc., GSR Dynasty, LLC, Meri Ferrari, breached the standard of care and the breach caused Betty Davis's injuries and death.

FURTHER AFFIANT SAYETH NAUGHT.

Mark Shoag MD

MARK SHOAG, MD

SWORN TO BEFORE ME and subscribed in my presence this 26th day of February, 2024.

NOTARY PUBLIC Beth Dvorak
My commission has no expiration pursuant to RC §147.03

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NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
February 27, 2024 16:22

By: MICHAEL A. HILL 0088130

Confirmation Nbr. 3099238

ESTATE OF BETTY O. DAVIS

CV 24 993498

vs.

Judge: WILLIAM T. MCGINTY

EMBASSY OF LYNDHURST AKA EMBASSY LYNDHURST,, ET AL

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