IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

ESTATE OF MARY LOU McCARTY, DECEASED Through Estate Representative Patrick McCarty c/o Michael Hill Trial Law 815 Superior Avenue, Suite 623 Cleveland, Ohio 44114 Plaintiff, vs. STORYPOINT POWELL NORTH AKA SENIOR LIVING POWELL NORTH, LLC 10351 Sawmill Parkway Powell, Ohio 43065 Also Serve c/o Registered Agent: Cogency Global, Inc. 3958 Brown Park Drive Suite D Hilliard, Ohio 43026 and STORYPOINT GROUP AKA DANBURY SENIOR LIVING AKA SENIOR VILLAGE MANAGEMENT, LLC c/o Registered Agent: Cogency Global, Inc. 3958 Brown Park Drive Suite D Hilliard, Ohio 43026 Also Serve c/o Registered Agent: Robert Czapiewski 7927 Nemco Way Suite 200 Brighton, MI 48116 and BENCHMARK INVESTMENTS XII LP c/o Registered Agent:	CASE NO. JUDGE **COMPLAINT** **WITH JURY DEMAND**

CLERK OF COURTS - DELAWARE COUNTY, OH - COMMON PLEAS COURT
25 CV C 03 0302 - SCHUCK, JAMES P.
FILED: 03/12/2025 09:41 AM

Corporation Service Company
1160 Dublin Road
Suite 400
Columbus, Ohio 43215

Defendants.

Plaintiff, the Estate of Mary Lou McCarty, Deceased, through Estate Representative Patrick McCarty, for this Complaint against the above-named Defendants, states and avers upon information and belief:

INTRODUCTION

1. This action involves multiple claims (medical negligence, recklessness, wrongful death, and Resident's Rights Law violations) involving StoryPoint Powell North aka Senior Living Powell North, LLC's (the "Facility's") inadequate care of Mary Lou McCarty and the corporate control of the facility leading to such inadequate care that led to Mary Lou McCarty's untimely and wrongful death on March 17, 2024.

2. StoryPoint Powell North aka Senior Living Powell North, LLC, and their corporate owners, injured and caused the death of 82-year-old Mary Lou McCarty.

3. Ms. McCarty was admitted to the memory care unit at StoryPoint Powell North on December 29, 2023 for long-term care following a fall in her apartment at an independent living facility. Upon admission, the staff at StoryPoint were made aware that Ms. McCarty required assistance with all activities of daily living and significant assistance during mealtimes - including having her food cut into small portions, fluids available within reach, verbal cues to eat, and escorts to the dining room.

4. The facility represented to Ms. McCarty and her family that they were capable of addressing all of their concerns regarding her treatment, that a nurse practitioner would be available to provide care on-site, that medications and refills would be managed in-house, and that she would receive professional medical care from a "highly trained staff and medical team." In truth, the facility knew that they lacked adequate staff to provide the level of care that Ms. McCarty required.

5. On several occasions, Ms. McCarty was sitting alone in her room with an untouched meal tray on her TV, the food cold and not cut into smaller potions, and an empty water bottle. As a direct result, Ms. McCarty's weight dropped rapidly.

6. Ms. McCarty was regularly left sitting in soiled diapers and clothes from the previous day. The family visited frequently and would often find Ms. McCarty still dressed and not in bed, sometimes as late as 9:30 p.m.

7. On March 9, 2024, a member of Ms. McCarty's family arrived at approximately 10:00 a.m. to feed her breakfast. Later that afternoon, another member of the family arrived just before dinner to find Ms. McCarty in a state of extreme distress. She had been left in her chair for over eight hours, resulting in severe swelling in her legs and an ulcer developed from the prolonged pressure.



Image of Mary Lou McCarty's legs after being left alone in her chair for over eight hours on March 9, 2024.

8. Following the incident on March 9, 2024, Ms. McCarty's condition deteriorated significantly.

9. On numerous occasions throughout Ms. McCarty's stay, her family expressed their concerns about the level of care that that she was receiving to

management at the facility. StoryPoint never corrected the numerous care issues that the family had brought to their attention. The problems including poor communication between members of the staff regarding her care, staff failing to provide assistance with eating and drinking as she required, staff frequently leaving her in soiled garments, staff leaving her unattended in her room or wheelchair for prolonged periods of time, and staff failing to provide proper hygiene care persisted the entire time that Ms. McCarty was in the care of StoryPoint.

10. StoryPoint caused Mary Lou McCarty's untimely death on March 17, 2024, by failing to assess, identify, and timely report to a physician Ms. McCarty's rapid weight loss and change in mental status observed throughout her stay.

11. Plaintiff requests a trial by jury.

12. Plaintiff has requested the complete medical records for Mary Lou McCarty from her residency at StoryPoint.

13. Defendants have refused to provide those records, which is a violation of Ohio law.

14. A motion to extend the period of time to file an affidavit of merit is being filed with this complaint.

15. Plaintiff reserves the right to amend this Complaint to add additional parties pursuant to Ohio Revised Code Section 2323.451(D)(1)-(2).

16. 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.

17. 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

18. StoryPoint Powell North aka Senior Living Powell North, 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 StoryPoint Powell North aka Senior Living Powell North, LLC.

19. Storypoint Group aka Danbury Senior Living aka Senior Village Management, LLC is a corporation registered in both Ohio and Michigan 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 StoryPoint Powell North aka Senior Living Powell North, LLC.

20. Benchmark Investments XII LP 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 StoryPoint Powell North aka Senior Living Powell North, LLC.

21. Defendants employ, manage, and direct the care and service providers who were responsible for Mary Lou McCarty's care, treatment, and safety at StoryPoint Powell North aka Senior Living Powell North, LLC, while she was 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 Mary Lou McCarty's injuries and untimely and wrongful death on March 17, 2024.

22. 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.

23. Defendants' organization controls 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.

24. Defendants collectively own, manage, control, and/or are responsible for the care delivered to residents of StoryPoint Powell North aka Senior Living Powell North, LLC directly or through their domination and control of any putative entity license holder.

VICARIOUS LIABILITY

25. The Defendants employ the care providers who were responsible for ensuring Mary Lou McCarty's care and safety.

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

27. Mary Lou McCarty and their family looked to the Defendants for care based upon their representations.

28. The 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

29. 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.

30. Venue is proper in Delaware 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

31. Defendants hold themselves out to the public as providers of long-term assisted living and memory care services.

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

33. For assisted living facilities 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 regulations regarding staffing levels.

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

35. The Defendants exercise actual control over the Facilities' 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;

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.

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

37. Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that the facilities were sufficiently staffed with adequately trained and competent nursing staff to meet the individual needs of its residents, including Mary Lou McCarty.

38. Defendants engaged in a systemic practice staffing their facilities with insufficient numbers of adequately trained and competent nursing staff to maximize profits at the expense of its residents' care.

39. This lack of adequately trained and competent nursing staff directly resulted in Mary Lou McCarty not receiving basic and necessary services to prevent, among other things, neglect leading to their injuries and death.

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

a. Brunswick Danbury
3430 Brunswick Lake Parkway, Brunwick, OH 44212

b. Danbury Broadview Heights
9500 Broadview Road, Broadview Heights, OH 44147

c. Danbury Columbus
2870 Snouffer Road, Columbus, OH 43235

d. Danbury Cuyahoga Falls
1691 Queens Gate Circle, Cuyahoga Falls, OH 44221

e. Danbury Huber Heights
8001 Red Buckeye Drive, Tipp City, OH 45371

f. Danbury Hudson
150 Omni Lake Parkway, Hudson, OH 44236

g. Danbury Massillon
2550 University Drive SE, Massillon, OH 44646

h. Danbury Mentor
9150 Lakeshore Boulevard, Mentor, OH 44060

i. Danbury Millersburg
4245 Glen Drive, Millersburg, OH 44654

j. Danbury Mount Vernon
1605 Venture Drive, Mount Vernon, OH 43050

k. Danbury North Canton
181 Applegrove Street NE, North Canton, OH 44720

l. Danbury North Ridgeville
33770 Bagley Road, North Ridgeville, OH 44039

m. Danbury Sanctuary Grande North Canton
850 Applegrove Street NE, North Canton, OH 44720

n. Danbury Tallmadge
73 East Avenue, Tallmadge, OH 44278

o. Danbury Westerville
730 N. Spring Road, Westerville, OH 43082

p. Danbury Wooster
939 Portage Road, Wooster, OH 44691

q. Independence Village of Aurora
505 S. Chillicothe Road, Aurora, OH 44202

r. Independence Village of Avon Lake
345 Lear Road, Avon Lake, OH 44012

s. Spring Leaf Columbus
2920 Snouffer Road, Columbus, OH 43235

t. Springwood Hudson
125 Omni Lake Parkway, Hudson, OH 44236

u. Springwood Westerville
865 Maxtown Road, Westerville, OH 43082

v. StoryPoint Cincinnati (New England Club)
8135 Beechmont Avenue, Cincinnati, OH 45255

w. StoryPoint Fairfield
7129 Gilmore Road, Fairfield Township, OH 45011

x. StoryPoint Gahanna
5435 Morse Road, Gahanna, OH 43230

y. StoryPoint Grove City

3717 Orders Road, Grove City, OH 43123

z. StoryPoint Medina
122 Medina Road, Medina, OH 44256

aa. StoryPoint Pickerington
611 Windmiller Drive, Pickerington, OH 43147

bb. StoryPoint Shaker Heights (Harbor Chase)
17000 Van Aken Boulevard, Shaker Heights, OH 44120

cc. StoryPoint Strongsville (Pearl Crossing)
19205 Pearl Road, Strongsville, OH 44136

dd. StoryPoint Troy
1840 Towne Park Drive, Troy, OH 45373

ee. StoryPoint Waterville
1470 Pray Boulevard, Waterville, OH 43566

41. This lack of adequately trained and competent nursing staff directly resulted in Mary Lou McCarty not receiving basic and necessary services to prevent, among other things, neglect leading to her injuries and death.

Misleading Advertising

42. In an effort to persuade the families of patients to become customers, 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.

43. The intent and outcome of this misleading practice is to cause residents, their families, and external care providers to believe the nursing facility's nursing staff are much better trained and sufficiently competent in order to provide the promised care. In actuality the practice of the Defendants is to not invest in educating and training staff members to be sufficiently competent to meet resident care needs.

44. 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 Training and Education Practices and Mary Lou McCarty's Care

45. The Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that StoryPoint Powell North aka Senior Living Powell North, LLC was sufficiently staffed, and the staff appropriately trained and informed, to meet the individual needs of Mary Lou McCarty during the period she was a resident at the facility.

46. Defendants engaged in a systemic practice to provide insufficient numbers of adequately trained and competent nursing staff at StoryPoint Powell North aka Senior Living Powell North, LLC to maximize profits at the expense of its residents' care.

47. This lack of sufficient numbers of adequately trained and competent nursing staff directly resulted in Mary Lou McCarty not receiving basic and necessary services, assessments, and interventions to prevent, among other things, neglect leading to her injuries and death at StoryPoint Powell North aka Senior Living Powell North, LLC during the period she was a resident at the Facility.

Defendants' Negligence and Recklessness with Mary Lou McCarty

48. Defendants accepted Mary Lou McCarty as an assisted living resident for long-term memory care.

49. Defendants agreed to accept Mary Lou McCarty into their Facility and provide care to them in exchange for monetary payment.

50. The Facility knew Mary Lou McCarty required assistance with all activities of daily living when they accepted when it accepted her into their care.

51. Mary Lou McCarty endured mental and physical pain suffering and death as a direct and proximate result of Defendants' failure to provide adequate care due to providing insufficient numbers of adequately trained and competent nursing staff at the facility.

FIRST CAUSE OF ACTION
(MEDICAL NEGLIGENCE / RECKLESSNESS)

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

53. Mary Lou McCarty depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

54. The Defendants had a duty to provide proper care and treatment to Mary Lou McCarty and to avoid causing injury to Mary Lou McCarty

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

56. The 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 detect signs of a change in condition;

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 Mary Lou McCarty;

e. Choosing to not provide accurate, adequate, or timely information to Mary Lou McCarty's family;

f. Choosing to violate orders relating to care of Mary Lou McCarty;

g. Choosing to violate state and federal regulations governing care and sufficiency of staffing in nursing home facilities by which residents like Mary Lou McCarty are a member of the class of persons intended to be protected from injuries like those they suffered;

h. Failing to ensure the rights and safety of its residents, including Mary Lou McCarty, as required by Ohio and federal regulations;

i. Choosing not to provide appropriate care to Mary Lou McCarty while she was a resident of the Facilities; and

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

57. These actions constituted a conscious disregard for Mary Lou McCarty'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.

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

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

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

61. The Defendants and their medical and nursing staff provided care to Mary Lou McCarty that fell below the standard of care expected of medical care and nursing home organizations, under the same or similar circumstances.

62. 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.

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

64. WHEREFORE, Plaintiff demands judgment against the Defendants 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)

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

66. Mary Lou McCarty depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

67. The Defendants had a duty to provide proper care and treatment to Mary Lou McCarty and to avoid causing injury to Mary Lou McCarty.

68. The Defendants, including their medical and nursing staff, failed to provide proper care and treatment to Mary Lou McCarty, which they knew or should have known they required, and their negligence was the direct and proximate cause of the injuries that Mary Lou McCarty suffered, and her ultimate death.

69. The 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 detect signs of a change in condition;

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 Mary Lou McCarty;

e. Choosing to not provide accurate, adequate, or timely information to Mary Lou McCarty's family;

f. Choosing to violate orders relating to care of Mary Lou McCarty;

g. Choosing to violate state and federal regulations governing care and sufficiency of staffing in nursing home facilities by which residents like Mary Lou McCarty are a member of the class of persons intended to be protected from injuries like those they suffered;

h. Failing to ensure the rights and safety of its residents, including Mary Lou McCarty, as required by Ohio and federal regulations;

i. Choosing not to provide appropriate care to Mary Lou McCarty while she was a resident of the Facilities; and

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

70. Mary Lou McCarty endured conscious pain, suffering, and disability, and other harms and losses as the direct and proximate result of Defendants' violations of R.C. 3721.13.

71. These actions constituted a conscious disregard for Mary Lou McCarty'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.

72. The Defendants were aware of the great probability of the harm that could result from their willful, wanton, and/or reckless misconduct.

73. The Defendants' disregard for the rights and safety of residents like Mary Lou McCarty created circumstances under which it became substantially certain that serious injuries would result.

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

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

76. The Defendants and their medical and nursing staff provided care to Mary Lou McCarty that fell below the standard of care expected of medical care and nursing home organizations, under the same or similar circumstances.

77. 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.

78. As a direct and proximate result of the negligence / recklessness described above, Mary Lou McCarty sustained injuries that ultimately caused her wrongful death.

79. Plaintiff brings this Cause of Action pursuant to Ohio's Wrongful Death Statute, Ohio Revised Code section 2125 *et seq.*, for the benefit of Mary Lou McCarty's heirs and next of kin who have suffered loss and damage due to her wrongful and untimely death

80. Mary Lou McCarty'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.

81. 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)

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

83. Defendants, directly or through their employees or agents, violated Mary Lou McCarty's rights as a resident of the Defendants' facilities, as enumerated in Ohio Revised Code section 3721.13, including, but not limited to:

a. The right to a safe and clean living environment;

b. The right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care;

c. The right to participate in decisions that affect the resident's life;

d. The right to have any significant change in the resident's health status reported to the resident's sponsor.

84. These violations are evidence of negligence and conscious disregard of Mary Lou McCarty's rights and safety, and give rise to a statutory cause of action.

85. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Mary Lou McCarty conscious pain, suffering, and disability, and other harms and losses including death.

86. WHEREFORE, Plaintiffs demand judgment against the Defendants 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
(FAILURE TO FURNISH MEDICAL RECORDS IN VIOLATION OF OHIO REVISED CODE 3701.74)

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

88. Patrick McCarty was appointed Executor of the Estate of Mary Lou McCarty on May 22, 2024, by the Probate Court of Delaware County, Ohio.

89. As Executor of his mother's Estate, Patrick McCarty qualifies as the "Patient's personal representative" as defined in R.C. 3701.74.

90. Defendants, directly or through their employees or agents, violated R.C. 3701.74 by failing to furnish the medical records of Mary Lou McCarty, despite valid legal requests to provide those records. Ohio Revised Code 3701.74(C).

91. Plaintiff attempted to acquire copies of these records from Defendants pre-suit with a HIPAA-compliant request submitted to the Defendants in writing on May 28, 2024. The Defendants provided an incomplete copy of Ms. McCarty's medical record on June 8, 2024.

92. On August 3, 2024, Plaintiff submitted an additional request in writing for the complete medical record to the Defendants. The Defendants effectively ignored this request.

93. On October 10, 2024, Plaintiff issued a subpoena for Ms. McCarty's complete medical record through the Estate of Mary Lou McCarty, pending in the Probate Court of Delaware County before Judge David A. Hejmanowski. The Defendants were served via certified mail on October 16, 2024.

94. On December 13, 2024, counsel for the Defendants sent correspondence to the undersigned stating that Plaintiff "did not provide an order from the probate court directing the release of Mary Lou McCarty's medical records." In that same correspondence, counsel for the Defendants confirmed that they received a copy of the subpoena, an authorization signed by the executor of the Estate of Mary Lou McCarty, and the Entry Appointing Fiduciary; Letters of Authority. Counsel for the Defendants then provided an incomplete copy of Ms. McCarty's medical records on December 30, 2024.

95. Defendants conduct is in direct violation of Ohio Revised Code 3701.74.

96. As a direct and proximate result of Defendants' violations of R.C. 3701.74, Plaintiff has been denied their right of access to the record.

97. Plaintiff brings this civil action to enforce all rights under the law for Defendants failure to comply with R.C. 3701.74.

WHEREFORE, Plaintiffs demand judgment against the Defendants 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.

A TRIAL BY JURY IS HEREBY DEMANDED

Respectfully Submitted,

/s/ Michael A. Hill

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