

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONTGOMERY**

ELLEN ADAMS individually and on behalf of all
others similarly situated,

Plaintiff,

v.

CSRNC, LLC D/B/A CAPSTONE CENTER FOR
REHABILITATION AND NURSING; 302 SWART HILL
ROAD LLC; UPSTATE SERVICE GROUP, LLC; URI
KOENIG; EFRAIM STEIF; DAVID CAMEROTA; and
DOES 1-25,

Defendants.

Index No. _____

SUMMONS

Summons Filed:
October 22, 2024

To the above-named Defendants:

You are hereby summoned and required to answer the attached complaint of the Plaintiff in this action and to serve a copy of your answer upon the attorneys for the Plaintiff at the address stated below.

If this summons was personally delivered to you in the State of New York, you must serve the answer within 20 days after such service, excluding the day of service. If this summons was not personally delivered to you in the State of New York, you must serve the answer within 30 days after service of the summons is complete, as provided by law.

If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint.

Plaintiff designates Montgomery County as the place of trial.

Venue is proper in this County pursuant to CPLR 503(a) because Capstone Center for Rehabilitation and Nursing is located in this County and a substantial part of the events or omissions giving rise to the claims occurred in this County.

Dated: October 22, 2024
White Plains, New York

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**

By: /s/Jeremiah Frei-Pearson

Jeremiah Frei-Pearson

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Attorneys for Plaintiff and the Proposed Class

**SUPREME COURT OF THE STATE OF NEW YORK
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Index No. _____

**VERIFIED
CLASS ACTION
COMPLAINT**

Date Index No. Purchased:
October 22, 2024

Ellen Adams (“Plaintiff”), represented by and through her undersigned attorneys,
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, as and for her class action complaint,
alleges, with personal knowledge as to her own actions and based upon information and belief as
to those of others, as follows:

NATURE OF THE ACTION

1. Ellen Adams brings this class action against defendants CSRNC, LLC
 (“CSRNC”) d/b/a Capstone Center for Rehabilitation and Nursing; 302 Swart Hill Road, LLC
 (“302 Swart”); Upstate Service Group LLC (“USG”); Uri Koenig; Efraim Steif; David
 Camerota; and Does 1-25 (collectively, “Defendants”) on behalf of herself and a class (the
 “Class”) consisting of current and former residents of Capstone Center for Rehabilitation and
 Nursing (“Capstone” or the “Facility”), all of who were victimized by unsafe and inadequate
 care in the Facility.

2. Defendants, who are the owners, operators, and persons in control of Capstone,
 are entrusted to provide care to the elderly and infirm nursing home residents in their custody.

Indeed, federal and New York law provide Capstone residents with a right to a nursing home with a sufficient number of nursing staff such that the Facility is able to meet the needs of all the residents in their care.¹

3. Capstone's website proudly proclaims that its "unit nurses and certified nursing assistants are assigned on a 24-hour basis" and that "[t]his affords residents consistent quality care along with the development of close personal relationships," and that its nursing staff "offer[] a warm, caring atmosphere promoting maximum independence of both body and spirit" and "are always pleasant and try to include family members in planning a resident's care," with the result being "satisfied residents, satisfied family members and excellent care."²

4. Defendants, however, mislead and deprive Capstone residents of their right to a sufficiently staffed home, despite promises to the contrary and obligations under federal and New York law. As a result, Defendants denied Capstone residents the full value of the services to which the residents are entitled, harming the residents financially, physically, and emotionally, and wrongfully enriching Defendants.

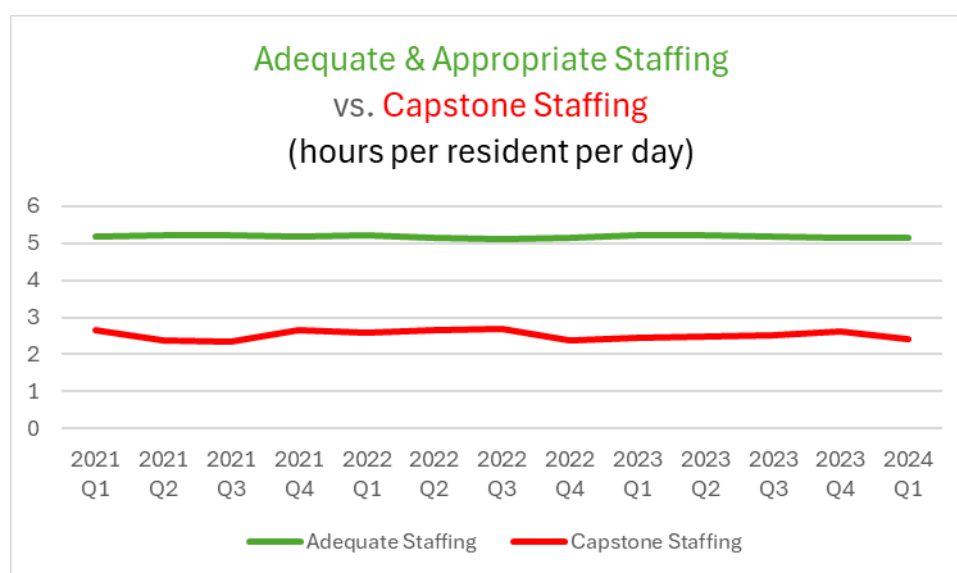
5. Capstone's own self-reported data reveals the shocking degree to which Defendants have understaffed the Facility. Pursuant to federal law, Capstone, like all such nursing homes, must submit to the federal Centers for Medicare and Medicaid Services ("CMS")

¹ See 10 N.Y.C.R.R. § 415.13 (mandating that a nursing facility "shall provide sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident"); 42 U.S.C. § 1396r(b)(4)(C)(i)(I) (mandating that a nursing facility "must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents"); 42 U.S.C. § 1395i-3(b)(4)(A)(i) (mandating that a nursing facility must provide "nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident").

² See <https://capstonecenterrehab.com/services/nursing-care/> (last visited October 10, 2024).

the results of resident assessments (known as Minimum Data Sets or “MDS”) which group each resident into distinct categories reflecting the level of care needed by a resident (known as “acuity”). Using this data, government regulators determine the amount that Capstone is paid to care for its residents’ needs, reflecting the fact that increased care requires increased staffing. This data also shows the level of staffing needed at Capstone to satisfy the federal and New York requirement that a home have sufficient staffing -- measured in hours per resident day (“HPRD”) -- to care for its entire resident population. By way of a Freedom of Information Act request, Plaintiff has acquired the MDS submitted by Capstone for the majority of the relevant period.

6. In addition to being required to submit data reflecting the collective acuity of its resident population (and thus, the staffing levels required), Capstone is also required to report its actual staffing provided to CMS in the form of Payroll-Based Journal (“PBJ”) data that reflects the number of hours of nursing care actually provided at the Facility each day. Just as it does for all other nursing homes, CMS’s website publishes the PBJ data reported by Capstone on a quarterly basis. The graph below compares Capstone’s adequate and appropriate staffing, based on the acuity reflected in its residents’ MDS data, to its actual staffing.



7. As the above graph shows, Capstone has failed to provide its residents with the amount of nursing staff necessary for its residents to obtain the highest practicable level of health, as required by law. As a result, Ellen Adams and the other members of the Class were deprived of their right to a home with sufficient staffing to care for their needs and were deprived of the critical nursing services for which Capstone was paid.

8. Indeed, in 2023 alone, based upon the staffing expenditures and average wage rates reported by the Facility to CMS, Defendants' practice of understaffing Capstone deprives the Class of over \$2,117,680.88 of nursing services Defendants were paid to provide. Rather than pay for the staffing services to which the residents of Capstone were and are entitled and which the Facility was paid to provide, Defendants simply pocketed the cash.

9. In addition to this financial injury, Capstone's failure to provide adequate nursing staff to meet its residents' needs harmed the residents physically by denying them the care needed to maintain their health and well-being.³ Capstone's inadequate staffing also harmed the Class emotionally by subjecting them to a filthy and unhealthy environment and causing, *inter alia*, residents to spend extended periods of time with cries for assistance ignored, being forced to sit, unchanged, in soiled clothing and bedding for extended periods of time, not being moved from their beds for long periods, going without proper attention to cleaning or hygiene, and other predictable outcomes of inadequate care.

³ The link between staffing and resident health outcomes is well-documented. See CMS Design for Nursing Home Compare Five-Star Quality Rating System: Technical Users' Guide, January 2017 ("CMS Technical Users' Guide") at 6 ("There is considerable evidence of a relationship between nursing home staffing levels and resident outcomes. The CMS Staffing Study found a clear association between nurse staffing ratios and nursing home quality of care, identifying specific ratios of staff to residents below which residents are at substantially higher risk of quality problems.").

10. As the Facility has approximately 120 beds and is operating at a high occupancy rate of 97%,⁴ there are many other residents currently languishing in an unsafe and inadequate nursing home. Indeed, statements from other residents reflect that Capstone is understaffed, causing harm to all of its residents.

11. Because Defendants' unlawful conduct deprived Ellen Adams and the other residents of Capstone of their rights under New York and federal law, principally their right to a home with nursing staff sufficient to provide for the needs of all the residents of the home, Defendants are liable to Plaintiff and the Class pursuant to Section 2801-d of New York's Public Health Law ("PHL") for compensatory damages for the injuries suffered.⁵ Because Defendants' deprivation of Plaintiff's and the Class's rights was, at a minimum, in reckless disregard of those lawful rights, Defendants are liable for punitive damages.

12. Accordingly, Plaintiff, individually and on behalf of the Class, asserts claims against Defendants pursuant to PHL § 2801-d for Defendants' deprivation of the Facility's residents' rights. Plaintiff, individually and on behalf of the Class, seeks (i) monetary damages in an amount to be determined at trial, including statutory damages in accordance with PHL § 2801-d(2) and punitive damages, (ii) injunctive relief prohibiting further wrongful conduct, and (iii) any other available relief at law or in equity.

⁴ See *Capstone Center for Rehabilitation and Nursing*, NYS HEALTH PROFILES, NEW YORK STATE DEPARTMENT OF HEALTH, https://profiles.health.ny.gov/nursing_home/view/150439#overview (last visited October 21, 2024) (copy annexed hereto as Exhibit 1).

⁵ PHL § 2801-d provides a cause of action by residents against nursing homes that deprive them of "any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule or regulation or by any applicable federal statute, code, rule or regulation." See PHL § 2801-d(1).

PARTIES

I. Plaintiff

13. Ellen Adams is a resident of Johnstown in Fulton County, New York.

14. Ellen Adams was a resident of Capstone in Montgomery County from on or about December 2022, through on or about April 2023.

II. Defendants

15. Defendant CSRNC, LLC (“CSRNC”) is a Delaware limited liability company with its principal place of business in Rockland County, New York. CSRNC’s address is 1 Hillcrest Drive, Suite 225, Spring Valley, New York 10977. CSRNC is licensed to operate the Facility. The owners of CSRNC are Uri Koenig (60% interest), Efraim Steif (39.9% interest) and David Camerota (.10% interest).

16. Defendant 302 Swart Hill Road, LLC (“302 Swart”) is a Delaware limited liability company with its principal place of business in Montgomery County, New York. 302 Swart’s address is 1 Hillcrest Center, Suite 325, Spring Valley, New York 10977. 302 Swart owns the real property in which Capstone operates. 302 Swart leases the Facility to CSRNC pursuant to a non-arms’ length lease agreement. The owners of 302 Swart are Efraim Steif (40% interest) and Uri Koenig (60% interest).

17. Defendant Upstate Service Group LLC (“USG”) is a New York limited liability company with an address at 1 Hillcrest Center, Suite 225, Spring Valley, New York 10977. The owners of USG are Efraim Steif and David Camerota. USG is a healthcare network that operates a number of nursing homes, including the Facility. The owners of USG are Efraim Steif and David Camerota. USG is a healthcare network that operates approximately 17 affiliated skilled

nursing and rehabilitation facilities in New York, including Capstone.⁶ USG provides administrative and business support to and is a *de facto* corporate head office for the facilities under its umbrella. USG controls the staffing and other policies in effect at the facilities under its umbrella. USG is a vehicle through which Uri Koenig, Efraim Steif, and David Camerota and other controlling persons supervise their investment in the Facility.

18. Defendant Uri Koenig is a resident of Monsey in Rockland County, New York. Uri Koenig has held a 60% ownership interest in CSRNC during the alleged Class Period. Uri Koenig has held a 60% ownership interest in 302 Swart during the alleged Class Period.

19. Defendant Efraim Steif is a resident of Monsey in Rockland County, New York. Efraim Steif has held a 39.9% ownership interest in CSRNC during the alleged Class Period. Efraim Steif has held a 40% ownership interest in 302 Swart during the alleged Class Period. Efraim Steif has held a 100% ownership interest in USG during the alleged Class Period. Efraim Steif is the Chief Executive Officer at USG.

20. Defendant David Camerota is a resident of Marcy in Oneida County, New York. David Camerota has held a .10 % ownership interest in CSRNC during the alleged Class Period. David Camerota has held an ownership interest in USG during the alleged Class Period. David Camerota is the Chief Operating Officer at USG.

21. Defendants DOES 1-25 are those additional persons or entities who by reason of a direct or indirect ownership interest (whether of record or beneficial) have the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of the Facility.

⁶ See <https://projects.propublica.org/nursing-homes/affiliate/a-538> (last visited October 12, 2024).

JURISDICTION AND VENUE

22. This Court has jurisdiction over all causes of action asserted herein. Defendants are subject to the personal jurisdiction of this Court pursuant to CPLR 301 and 302.

23. Defendants have conducted and do conduct business in the State of New York, including through operation of the Facility.

24. Venue is proper in this County pursuant to CPLR 503(a) because the Facility is located in this County.

FACTUAL BACKGROUND

I. The Nursing Home Crisis Leads To Legislation Granting Patients A Right To Bring Class Actions Against Operators For Improper Care And To Federal Databases Tracking Nursing Home Staffing.

25. In an effort to protect the vulnerable nursing home population, ensure that their rights are enforced, and provide them with a form of legal recourse that would not otherwise be economically feasible, the New York State Legislature enacted PHL §§ 2801-d and 2803-c.

26. Before PHL §§ 2801-d and 2803-c, “the public’s confidence in the State’s ability to protect its most defenseless citizens, the aged and infirm, had been destroyed by a series of dramatic disclosures highlighting the abuses of nursing home care in their State.” *See* Governor’s Memoranda, Nursing Home Operations, McKinney’s 1975 Session Laws of New York, p.1764. In Governor Carey’s letter to the Legislature accompanying the bills for PHL §§ 2801-d and 2803-c, he stated that these bills were “designed to deal directly with the most serious immediate problems which have been uncovered with respect to the nursing home industry.”⁷ The Sponsor’s Memorandum relating to PHL § 2803-c and the transcripts of the

⁷ *Morisett v. Terence Cardinal Cooke Health Care Ctr.*, 8 Misc.3d 506, 509 (Sup. Ct. N.Y. Cnty. 2005).

Senate debates indicate that the purpose of the statute was to establish certain minimum standards for the care of nursing home patients. *See* Governor’s Bill Jacket for Chapter 648 of the Laws of 1975; Senate Debate Transcripts, 1975, Chapter 648 Transcripts, pp.4521, 4525. The term “residential health care facility” was intentionally used by the Legislature in an effort to curb abuses in the nursing home industry.⁸

27. The Commission’s Summary Report specifically indicated that PHL § 2801-d creates a cause of action for a patient of a facility which deprived the patient “of rights or benefits created for his well-being by federal or state law or pursuant to contract” which resulted in injury to the patient. The Commission stated that this statute “introduce[s] a degree of equality between nursing homes and their otherwise vulnerable and helpless patients and, through private litigation brought by patients either in individual or class action lawsuit, provides a supplemental mechanism for the enforcement of existing standards of care.”

28. The Legislative Memorandum “Nursing Home–Health Care Facilities–Actions by Patients” relating to PHL § 2801-d observes that nursing home patients “are largely helpless and isolated,” that many are “without occasional visitors,” and that “[m]ost cannot afford attorneys,” and therefore the bill provides nursing home patients “with increased powers to enforce their rights to adequate treatment and care by providing them with a private right of action to sue for damages and other relief and enabling them to bring such suits as class actions.” *See* McKinney’s Session Laws of New York, 1975 pp.1685-86. That memorandum states that PHL § 2801-d “creates incentives which would encourage private non-governmental parties (*i.e.*, plaintiffs’ attorneys) to help protect the rights of nursing home patients.” *Id.*

⁸ *See Town of Massen v. Whalen*, 72 A.D.2d 838 (3d Dept 1979).

29. This statutory cause of action was created as an additional remedy, separate and distinct from other available traditional tort remedies.⁹

30. PHL § 2808-a(1) provides that “[e]very person who is a controlling person of any residential health care facility liable under any provision of this article to any person or class of persons for damages or to the state for any civil fine, penalty, assessment or damages, shall also be liable, jointly and severally, with and to the same extent as such residential health care facility, to such person or class of persons for damages or to the state for any such civil fine, penalty, assessment or damages.” “[A] ‘controlling person’ of a residential health care facility shall be deemed to mean any person who by reason of a direct or indirect ownership interest (whether of record or beneficial) has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of said facility.” PHL § 2808-a(2). It is not necessary to “show[] that the individual defendants participated in the alleged wrongful conduct; rather, such controlling persons need only possess the ability to direct or cause the direction of the management or policies of the facility[.]”¹⁰

31. This class action seeks to address the injustices that caused the Legislature to enact PHL § 2801-d. As alleged in more detail below, Defendants have violated and continue to violate their statutory obligations by failing to provide, among other things, adequate staffing, supervision, treatment, hygiene, and medical attention to the Class.

⁹ See *Kash v. Jewish Home & Infirmary of Rochester, N.Y. Inc.*, 61 A.D.3d 146, 150 (4th Dept 2009).

¹⁰ See *Peters v. Nesconset Ctr. for Nursing & Rehab.*, 47 Misc. 3d 1211(A) (Sup. Ct. Queens Cnty. Apr. 15, 2015) (internal quotations, citations, brackets, ellipses omitted).

II. Defendants Deprive The Residents Of Their Right To Sufficient Staffing.

32. Capstone is a 120-bed skilled nursing facility located at 302 Swart Hill Road, Amsterdam, New York 12010. Before Defendants purchased the home, it was named Mount Loretto Nursing Home and operated by the Sisters of the Resurrection and the Sisters of the Holy Family of Nazareth as a not-for-profit residential health care facility.

33. In or about March 2012, USG purchased the Facility for an undisclosed sum and renamed it Capstone Center for Rehabilitation and Nursing.

34. On March 12, 2012, Mount Loretto Nursing Home, Inc., with the approval of the Department of Health, entered into a receivership agreement with CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing, who assumed operation of the Facility through an Assignment and Assumption of Rights agreement.¹¹

35. In 2014, the New York Department of Health approved the transfer of the operating interest in the Facility to CSRNC and the property interest in the Facility to 302 Swart.

36. After approval, Mount Loretto Realty, LLC transferred ownership of the property to 302 Swart, and CSRNC became the licensed operator. Subsequently, 302 Swart entered into a non-arm's length lease with CSRNC.

37. Defendants, in contravention of applicable federal and New York State laws, rules, and regulations, have failed and continue to fail to promote the care of the Facility's residents in a manner that maintains or enhances each resident's dignity.

¹¹ State of New York Public Health and Health Planning Council Committee, Project # 132261 E (https://www.health.ny.gov/facilities/public_health_and_health_planning_council/meetings/2014-04-10/) (accessed October 15, 2024) (relevant portion of which is annexed hereto as Exhibit 2)

38. Indeed, conditions at the Facility have been and continue to be unsafe and violative of applicable laws, rules, and regulations, and the care provided to Ellen Adams and the Class has been and continues to be inadequate.

39. In particular, Defendants have failed and continue to fail to provide sufficient nursing staff to provide the nursing and related services necessary to attain and maintain the highest practicable physical and psycho-social well-being of all the residents, as required by New York and federal law.¹² A resident's right to sufficient staffing is one of the most important rights protected by New York and federal law.

40. The actual staffing data at the Facility can be drawn from Defendants' own Payroll Based Journal ("PBJ") data which is self-reported to CMS. CMS developed the PBJ submission system so that nursing home facilities could submit staffing information regularly and frequently based on the facilities' own payroll data.¹³ PBJ data submitted by long term care facilities is publicly available, including "the hours nursing staff are paid to work each day, for each facility[.]" and "a facility's census for each day within the quarter as calculated using the minimum data set (MDS) submission."¹⁴

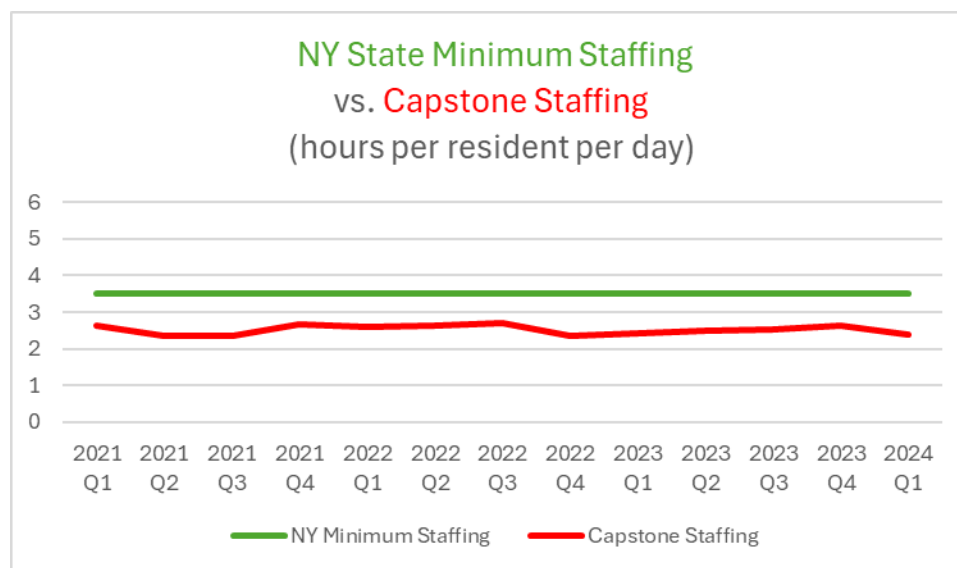
41. Sadly, the Facility's nursing staff numbers fall far below the staffing levels established by New York and federal regulations as floors below which no home -- even homes

¹² See 10 N.Y.C.R.R. § 415.13; 42 U.S.C. § 1396r(b)(4)(C)(i)(I); 42 U.S.C. § 1395i3(b)(4)(A)(i).

¹³ *Staffing Data Submission Payroll Based Journal (PBJ)*, CTRS. FOR MEDICARE & MEDICAID SERVS. <https://www.cms.gov/medicare/quality/nursing-home-improvement/staffing-data-submission> (last visited October 17, 2024).

¹⁴ *Id.*

with the lowest acuity residents -- may fall without being presumptively insufficiently staffed and therefor subject to regulatory penalties.¹⁵

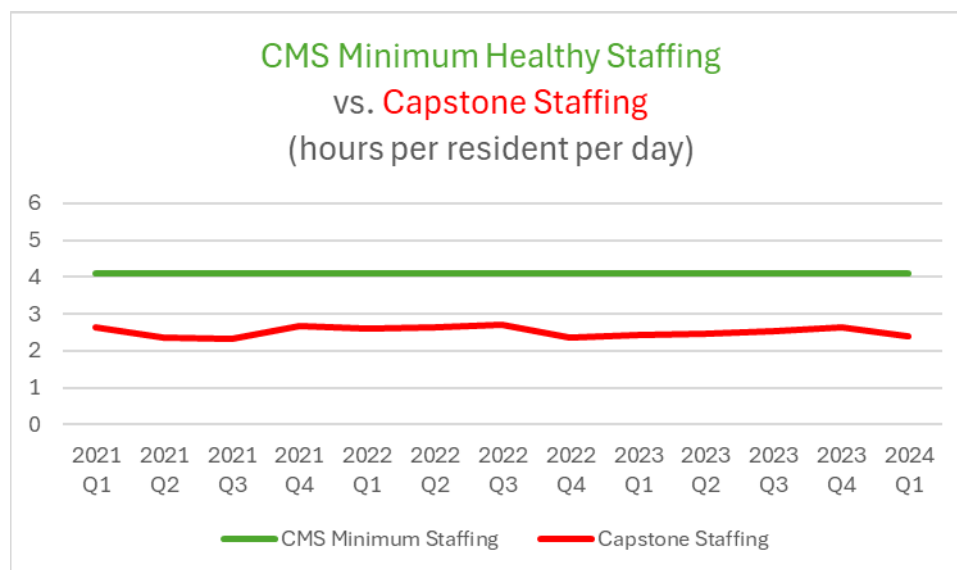


42. Additionally, CMS has determined that any home that does not provide at least 4.1 hours per resident per day (“HPRD”) of nursing care is necessarily an unsafe environment for those residents.¹⁶ The Facility’s nursing staff have consistently been below this 4.1 level that

¹⁵ 3.5 hours per resident day and 3.48 hours per resident day are the current levels set in New York and federal regulations, respectively. See Public Health Law § 2895-b; 42 CFR § 483.35. However, 3.5 hprd is a minimum, rather than a “safe harbor” for facilities, who still have a requirement to provide staffing necessary to meet resident needs. See 10 N.Y.C.R.R. § 415.13 (mandating that a nursing facility “shall provide sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident”).

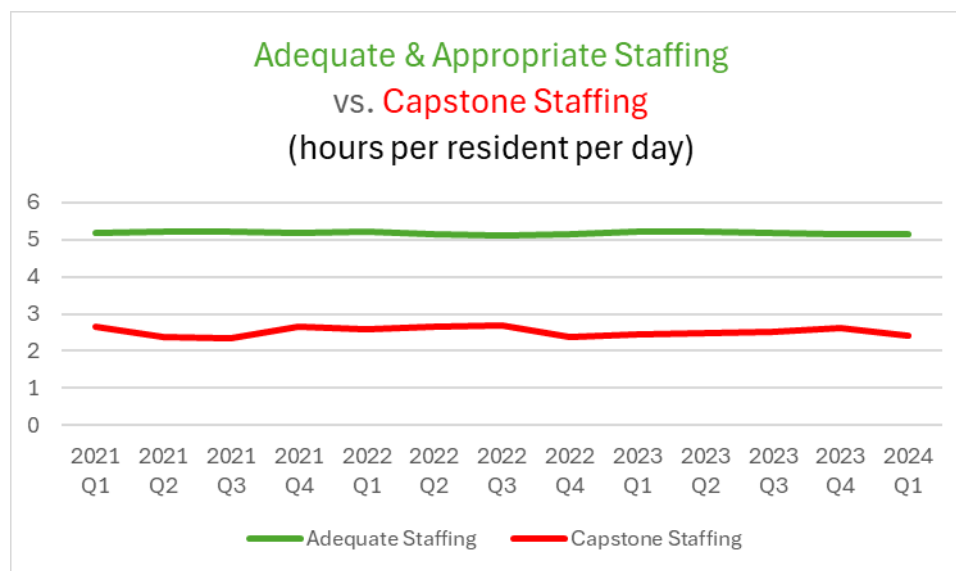
¹⁶ See United States Department of Health, Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Overview of the Phase II Report: Background, Study Approach, Findings, and Conclusions, 4-5 (“The analyses conducted in the Phase I Report firmly established that there are critical ratios of nurses to residents below which nursing home residents are at substantially increased risk of quality problems. These critical ratios (or thresholds) exist for certified nurse aides, total licensed staff, and registered nurses These thresholds for NAs occurred at 2.8 hours per resident day for the long-stay quality measures and for licensed staff . . . 1.3 hours per resident day for the long-stay quality measures. Within these totals, RN thresholds were at . . . 0.75 hours per resident day for the long-stay quality measures. Thus these thresholds provides staffing levels below which facilities were more likely to have quality problems in the quality areas studied.”).

CMS determined is the minimum necessary to provide the lowest-acuity home with the care necessary to maintain their health and dignity at the highest practicable level.



43. Most importantly, the Facility’s own self-reported data reveals the shocking degree to which Defendants have understaffed the Facility. As noted above, federal law requires Capstone, like all such nursing homes, to submit to CMS resident data (in the form of MDS) that groups each resident into distinct categories reflecting acuity. Using anonymized MDS for the Facility through the end of 2023—acquired from a third-party who received the data via a FOIA request—and applying a peer-reviewed methodology for assessing nursing home staffing sufficiency, Plaintiff can establish what the adequate and appropriate “hours per resident per day” of nursing staff would be for the Facility for each day. Based on the acuity of Capstone’s residents, as reflected in their resident assessment data reported to federal regulators, Capstone’s staffing has never reached the level necessary to provide residents with the care they need.¹⁷

¹⁷ Adequate & appropriate staffing levels for 2024 assume resident acuity consistent with the previous year’s average.



44. Defendants' failure to properly staff the Facility is particularly egregious because understaffing is one of the primary causes of inadequate care and often unsafe conditions in nursing facilities. As explained in further detail below, numerous studies have shown a direct correlation between inadequate staffing and serious care problems including, but not limited to, a greater likelihood of falls, pressure sores, significant weight loss, incontinence, and premature death. Although the dangers caused by understaffing are common knowledge in the nursing home industry, Defendants nonetheless chose not to provide adequate staffing levels.

45. Instead, Capstone maintains dangerously low staffing to promote profits. Applying the actual nurse staffing wage rates reported by the Facility in its 2023 CMS Form 2540-10, just one year of subjecting Capstone's residents to understaffed and dangerous conditions saved Defendants an additional \$2,117,680.88 in expense that they could use instead to line their pockets.

46. Ellen Adams's experience at the Facility is illustrative of the horrible impact that understaffing has on resident care. Due to understaffing at the Facility, Ellen Adams suffered significant injury throughout her residency at the Facility.

47. For example, Ellen Adams was left to sit in soiled diapers for hours.
48. Ellen Adams did not receive the medication she was prescribed.
49. Ellen Adams's call bell requests would go unanswered for long periods of time, if answered at all.
50. Ellen Adams did not receive a shower for six weeks while under the Facility's care.
51. In addition, family members of other Capstone residents, former residents, and ex-employees of Capstone have witnessed and testified to both the pervasiveness of the understaffing at the Facility and its harm to the residents, including:
- Insufficient staff to meet residents' needs.
 - A filthy and unsanitary environment.
 - Residents going without changing and left to sit in their own waste for long periods of time.
 - Residents going without assistance with their personal hygiene.
 - Residents going without food or nourishment and losing weight.
 - Residents going without exercise or even minimal movement for long periods of time.
 - Resident conditions going untreated, resulting in pain, discomfort, emotional distress, and severe injury.
 - Residents missing or being given incorrect medication.
 - Residents suffering falls.
 - Residents going without the necessary assistance in using the restroom.
 - Residents waiting excessive amounts of time for staff after using the call bell or requests by family members, if staff members even come at all.
 - Staff behaving rudely or even violently toward, or around the residents.
 - The Facility lacking sufficient supplies for residents.

- Residents being subjected to extremely cold/hot conditions.

52. One affirmant, Christy Samson, testifies that she often found her mother “lying in her urine and feces” and that she “would beg the staff to get her out of bed, but no one would help me.” When she visited her mom, Ms. Sampson often saw Facility staff make residents sit in chairs knowing they were unchanged and soaking in their own urine. Sadly, though her mother’s symptoms had worsened the day of her death, no one informed Ms. Sampson, and her mom died alone at the Facility.

53. Another affirmant, Renee Cramer, attests to her mother falling three times at the Facility and passing away after the third fall. The ambulance report stated that her mother’s body was cold when they arrived. Her mother’s roommate buzzed and called out for help, but no one responded for hours. She states that her mother was never bathed by Facility staff for the three months her mother resided at Capstone. When Ms. Cramer complained, she was told “that the Facility was short-staffed and could not help.”

54. Another affirmant, Georgiana Corbett, a licensed practical nurse (“LPN”) who worked at Capstone during the relevant period, attests to working alone for half the shift on a forty-bed unit. She states that she worked the night shift, and most times, it was only her and one certified nursing assistant (“CNA”). Because they were so understaffed, she states,

I had to do my job and help the CNA complete her tasks. During the day, most times, there were only 2 CNAs for the entire floor. I could not work the day shift because there was too much going on, and it was difficult to care for the residents with such limited staff. One LPN and two CNAs were staffed per shift to the dementia unit on the fourth floor. There were residents wandering around and entering other residents’ rooms; you cannot keep residents safe when there is insufficient staff. Residents are not getting proper care; they are getting the short end of the stick.

Georgiana Corbett further attests to the unsanitary conditions at the Facility, stating it is

...unsanitary. I worked at the Facility when it was Mount Loretto, and back then, every room was cleaned every day. The Facility’s conditions deteriorated when its

new owners purchased it and it became Capstone. Capstone had one housekeeper for the entire building. Feces would remain on toilets for days.

55. On January 21, 2022, the New York Department of Health (“DOH”) cited the Facility which documented numerous references to deprivations of residents’ right to staffing or to incidents attributable to inadequate staffing, including the Facility’s failure to maintain a safe, clean, comfortable and homelike environment.¹⁸ Specifically, the DOH found that the Facility did not ensure that units’ walls and floors were clean and/or in good repair. DOH observations further showed that residents’ bathrooms were heavily soiled, and the floors of other residents’ rooms were dirty and contained food debris. Observations also showed walls needed patching and painting. During the same DOH visit, it was observed that residents’ call bells went unanswered for approximately forty-five minutes, with nine staff members walking past the resident call bell and ignoring it. The DOH found that all nursing personnel must be aware of the call lights at all times. Additionally, they must answer the call light and address the resident’s issues even if they are not the resident’s primary care giver.

**III. The Facility Is Unsafe And The Conditions
To Which Its Patients Are Subjected Violate Numerous Statutes.**

56. Conditions at the Facility have been and continue to be unsafe and violative of applicable laws, rules, and regulations, and the care provided to the Class has been and continues to be inadequate.

¹⁸ See New York State Department of Health NYS Health Profiles, Capstone Center for Rehabilitation and Nursing January 21, 2022 Certification/complaint Survey at https://profiles.health.ny.gov/nursing_home/poc_inspection_detail/GHWE (last visited October 21, 2024) (copy annexed hereto as Exhibit 3).

1. Understaffing Harms All Facility Residents By Depriving Them Of Care.

57. As Ellen Adams's and other residents' experiences demonstrate, Defendants have deprived Capstone's residents of the nursing services necessary to maintain their health and well-being.

58. By dint of their being admitted to a long-term care facility, nursing home residents require a certain amount of care to meet their care requirements and complete their Activities of Daily Living ("ADLs"). If those residents do not receive the level of care necessary to meet their ADLs, they inevitably suffer worse health outcomes and emotional harm.

59. Residents of understaffed nursing homes suffer a number of injuries as a result of their insufficient care including, among other injuries, pressure ulcers, medication errors, new infections, and IVs running dry or leaking, and patient falls.¹⁹

2. Understaffing Harms All Facility Residents Financially.

60. Because all residents of the Facility were deprived of their rights to adequate staffing, among other rights detailed in New York State and Federal law, the residents of the facility suffered pecuniary injury along with the adverse health outcomes resulting from understaffing.

61. PHL § 2801-d(1) provides:

62. Any residential health care facility that deprives any patient of said facility of any right or benefit . . . shall be liable to said patient for injuries suffered as a result of said deprivation For the purposes of this section, "injury" shall include, but not be limited to, physical harm to a patient; emotional harm to a patient; death of a patient; and financial loss to a patient.

¹⁹ See Charlene Harrington et al., *Appropriate Nurse Staffing Levels for U.S. Nursing Homes*, 13 HEALTH SERV. INSIGHTS 1-14 (June 29, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7328494/>.

63. PHL § 2801-d encompasses the deprivation not just of a right but of a “benefit” to which residents are entitled. A benefit is, by definition, a tangible entitlement to money or other valuable goods or services, the deprivation of which is, by definition, an “injury.”

64. Each resident of the Facility was deprived of the benefit for which they contracted and for which the Facility was paid: an adequately-staffed Facility able to provide nursing care sufficient to meet their ADLs.

65. Accordingly, each resident of the Facility suffered financial injury as a result of the understaffing at the Facility.

CLASS ACTION ALLEGATIONS

66. This action is brought on behalf of Ellen Adams and all similarly situated persons pursuant to Civil Practice Law and Rules 901 *et seq.*²⁰ The Class is defined as:

All persons who reside, or resided, at the Facility from October 22, 2021, to the present.

67. Plaintiff reserves the right to amend the above definitions, or to propose other or additional classes, in subsequent pleadings and/or motions for class certification.

68. Plaintiff is a member of the Class.

69. Excluded from the Class are: (i) Defendants; any entity in which Defendants have a controlling interest; the officers, directors, and employees of Defendants; and the legal

²⁰ PHL § 2801-d explicitly provides for these statutory claims to be brought as a class action. See PHL § 2801-d(4) (providing that “[a]ny damages recoverable pursuant to this section, *including minimum damages as provided by subdivision two of this section*, may be recovered in any action which a court may authorize to be brought as a class action” (emphasis added)). PHL § 2801-d(2) provides that “compensatory damages shall be assessed in an amount sufficient to compensate such patient for such injury, but in no event less than twenty-five percent of the daily per-patient rate of payment established for the residential health care facility under section twenty-eight hundred seven of this article or, in the case of a residential health care facility not having such an established rate, the average daily total charges per patient for said facility, for each day that such injury exists.”

representatives, heirs, successors, and assigns of Defendants; (ii) any judge assigned to hear this case (or any spouse or family member of any assigned judge); (iii) any juror selected to hear this case; (iv) claims for personal injury and wrongful death; and (v) any and all legal representatives of the parties and their employees.

70. This action seeks to enjoin Defendants from understaffing the Facility, from failing to disclose its understaffing, from deceptively advertising staffing at the Facility, and from making misleading promises about staffing at the Facility. In addition, this action seeks recovery -- including statutory minimum damages -- from the Defendants for the Class's injuries resulting from Defendants' failure to meet their contractual, statutory, and regulatory obligations. This action also seeks punitive damages and attorney's fees and costs allowable under PHL § 2801-d.

71. Plaintiff and the Class satisfy the requirements for class certification as provided by Civil Practice Law and Rules 901, *et seq.*, for the following reasons:

72. **Numerosity of the Class.** Members of the Class are so numerous that their individual joinder is impracticable. The Class consists of at least a hundred persons and is therefore so numerous that joinder of all members, whether required or permitted, is impracticable. The precise number of persons in the Class and their identities and addresses may be ascertained from Defendants' records. If deemed necessary by the Court, members of the Class may be notified of the pendency of this action.

73. **Common Questions of Fact and Law.** Common questions of law and fact exist as to all members of the Class. These common legal and factual questions include, without limitation:

- a. Whether Defendants violated or violate New York laws, including, but not limited to, PHL § 2801-d, by depriving any patient of the Facility of any right or benefit

created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule, or regulation, or by any applicable federal statute, code, rule, or regulation during the Class Period;

- b. Whether Defendants violated or violate New York laws, including, but not limited to, PHL § 2803-c, by failing to provide any patient of the Facility with adequate and appropriate medical care, failing to provide courteous, fair and respectful care and treatment, and failing to ensure every patient was free from mental and physical abuse during the Class Period;
- c. Whether Defendants' conduct injured Plaintiff and the residents of the Facility financially;
- d. Whether Defendants' conduct injured Plaintiff and the residents of the Facility physically;
- e. Whether Defendants' conduct injured Plaintiff and the residents of the Facility emotionally;
- f. Whether Defendants failed or fail to employ an adequate number of qualified personnel to carry out all of the functions of its Facility in violation of PHL §§ 2801-d and 2803-c;
- g. Whether Defendants' decision to understaff the Facility and failure to provide adequate and appropriate medical care violated or violates any right(s) of residents as set forth in PHL §§ 2801-d and 2803-c;
- h. Whether Defendants' conduct violated or violates sections 31.19(a) and 16.19(a) of the New York Mental Hygiene Law;
- i. Whether Defendants' conduct violated or violates section 415 of the New York Code Rules and Regulations, including but not limited to subsections 415.3, 415.5, 415.12, 415.13, 415.14, 415.15, and 415.26;
- j. Whether Defendants' conduct violated or violates the federal Nursing Home Reform Act, codified at 42 U.S.C. §§ 1395i-3(a)-(h) & 1396r(a)-(h) and at 42 C.F.R. §§ 483.15, 483.20, 483.25, 483.30, 483.40, 483.60, & 483.75.

74. **Typicality.** The claims of Plaintiff are typical of the claims of the proposed Class because Plaintiff's claims are based upon the same legal theories and same violations of New York State law. Plaintiff's grievances, like the proposed Class members' grievances, all arise out of the same business practices and course of conduct by Defendants. Further, Plaintiff's

damages arise out of a pattern of uniform and repetitive business practices conducted by Defendants.

75. **Adequacy.** Plaintiff will fairly and adequately represent the Class on whose behalf this action is prosecuted. Plaintiff's interests do not conflict with the interests of the Class.

76. Plaintiff's chosen attorneys, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG"), are familiar with the subject matter of the lawsuit, have full knowledge of the allegations contained in this Complaint, and are able to assist in its prosecution. Indeed, FBFG has been appointed as lead counsel in several complex class actions across the country and has secured numerous favorable judgments in favor of its clients. FBFG's attorneys are competent in the relevant areas of the law and have sufficient experience to vigorously represent the Class members. Finally, FBFG possesses the financial resources necessary to ensure that the litigation will not be hampered by a lack of financial capacity and is willing to absorb the costs of the litigation.

77. **Superiority.** A class action is superior to any other available methods for adjudicating this controversy. The proposed class action is the surest way to fairly and expeditiously compensate so large a number of injured persons, to keep the courts from becoming paralyzed by hundreds -- if not thousands -- of repetitive cases, and to reduce transaction costs so that the injured Class members can obtain the most compensation possible.

78. Class treatment presents a superior mechanism for fairly resolving similar issues and claims without repetitious and wasteful litigation for many reasons, including the following:

- k. Absent a class action, Class members will suffer continuing, ever-increasing damages; violations of Class members' rights will continue without remedy; and the Facility will continue to remain understaffed, resulting in the mistreatment and improper care of its patients.

- a. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions. Many members of the Class are not in the position to incur the expense and hardship of retaining their own counsel to prosecute individual actions, which in any event might cause inconsistent results.
- b. When the liability of Defendants has been adjudicated, the Court will be able to determine the claims of all members of the Class. This will promote global relief and judicial efficiency in that the liability of Defendants to all Class members, in terms of money damages due and in terms of equitable relief, can be determined in this single proceeding rather than in multiple, individual proceedings where there will be a risk of inconsistent and varying results.
- c. A class action will permit an orderly and expeditious administration of the Class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions. If Class members are forced to bring individual suits, the transactional costs, including those incurred by Defendants, will increase dramatically, and the courts of New York will be clogged with a multiplicity of lawsuits concerning the very same subject matter, with the identical fact patterns and the same legal issues. A class action will promote a global resolution and will promote uniformity of relief as to the Class members and as to Defendants.
- d. This lawsuit presents no difficulties that would impede its management by the Court as a class action. The class certification issues can be easily determined because the Class includes only the residents of the Facility, the legal and factual issues are narrow and easily defined, and the Class membership is limited. The Class does not contain so many persons that would make the Class notice procedures unworkable or overly expensive. The identity of the Class members can be identified from Defendants' records, such that direct notice to the Class members would be appropriate.

FIRST CAUSE OF ACTION

PUBLIC HEALTH LAW § 2801-d

79. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained above with the same force and effect as if the same were set forth at full length herein.

80. At all relevant times, Defendants, either directly or indirectly, had possession and control (*de jure* or *de facto*) of the Facility's building(s), the nursing home located at 302 Swart Hill Road, Amsterdam New York 12010.

81. Capstone is a facility which provides nursing care to sick, invalid, infirmed, disabled, or convalescent persons in addition to lodging and board or health related services, or any combination of the foregoing.

82. At all relevant times, the Facility has operated as a nursing home as defined in PHL § 2801(2).

83. At all relevant times, the Facility has operated as a residential health care facility as defined in PHL § 2801(3).

84. CSRNC is the licensed operator of the Facility, doing business as Capstone Center for Rehabilitation and Nursing.

85. CSRNC is obliged to abide by the New York and federal statutes, codes, rules, and regulations that create or establish rights and benefits for the well-being of the patients of Capstone, including, but not limited to, sections 2801-d and 2803-c of New York's Public Health Law, sections 31.19(a) and 16.19(a) of New York's Mental Hygiene Law, section 415 of the New York Code Rules and Regulations, and the federal Nursing Home Reform Act. These statutes, codes, rules, and regulations impose various obligations on operators of nursing homes, including, among others, a duty to adequately staff the Facility.

86. At all relevant times, 302 Swart, USG, Uri Koenig, Efraim Steif, and David Camerota (the "Controlling Person Defendants"), by reason of direct or indirect ownership interests (whether of record or beneficial), have each had the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of the Facility.

87. Pursuant to PHL § 2808-a, the Controlling Person Defendants are jointly and severally liable with and to the same extent as CSRNC is liable to any person or class of persons

for damages under any provision of Article 28 of New York's Public Health Law, including PHL § 2801-d.

88. Ellen Adams and the Class entered the Facility as resident patients for care, treatment, supervision, management, and/or rehabilitation.

89. During their residency in the Facility, Ellen Adams and the Class were under the exclusive care, custody, control, treatment, rehabilitation, supervision, and management of Defendants.

90. Defendants' responsibilities and obligations to Ellen Adams and the Class are non-delegable, and thus Defendants have direct and/or vicarious liability for violations, deprivations, and infringements of such responsibilities and obligations by any person or entity under Defendants' control, direct or indirect, including their employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools, or caused by Defendants' policies, whether written or unwritten, or common practices.

91. During the period of Plaintiff's and the Class's residency in the Facility, Defendants, through their officers, employees, agents, and staff, deprived Plaintiff and the Class of rights and benefits created and established for their well-being by the terms of their contracts with the Facility or by New York or federal law – including, but not limited to, the right to live in a Facility with staffing levels sufficient to meet the care needs of the all the residents in the Facility.

92. Defendants' deprivation of Ellen Adams's and the Class's rights substantially contributed to, created, and/or caused Ellen Adams's and the Class's injuries.

93. Ellen Adams and the Class sustained injuries – including financial loss, as well as physical and emotional harm – as a result of Defendants' depriving Plaintiff and the Class of

rights and benefits created and established for their well-being by the terms of their contracts with the Facility or by New York or federal law.

94. Plaintiff and the Class's injuries include, but are not limited to, not receiving the nursing hours necessary to attain the highest practicable level of care; and suffering a loss of the benefit of the bargain for which they contracted with Defendants – namely, a residency at a nursing home with, at the least, staffing sufficient to satisfy the requirements of New York and federal law.

95. Defendants deprived Ellen Adams and the Class of their rights and benefits and injured them thereby, making Defendants liable to Plaintiff and the Class pursuant to PHL § 2801-d.

96. All acts and omissions committed by employees and agents of Defendants were pervasive, omnipresent events that occurred and continued throughout Ellen Adams and the Class's residency at the Facility, and were such that supervisors, administrators, and managing agents of Defendants knew, or should have been aware, of them.

97. Pursuant to PHL § 2801-d(2), Plaintiff and the Class seek compensatory damages in an amount sufficient to compensate each patient for his or her injury, but in no event less than twenty-five percent of the daily per-patient rate of payment established for the Facility under PHL § 2807, or, in the event the Facility does not have an established rate, the average daily total charges per patient for the Facility, for each day that such injury existed.

98. In addition to damages suffered by Ellen Adams and the Class as the result of Defendants' deprivation of their rights as nursing home residents, justice requires that Plaintiff and the Class recover attorneys' fees and costs pursuant to PHL § 2801-d(6).

99. Because Defendants' deprivation Plaintiff's and the Class's rights and benefits was willful or in reckless disregard of the lawful rights of Plaintiff and the Class, justice requires that Plaintiff and the Class be awarded punitive damages pursuant to PHL § 2801-d(2), and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the Class, respectfully requests that the Court grant relief against Defendants as follows:

- a. For a Court Order certifying that the action may be maintained as a class action;
- b. On the First Cause of Action pursuant to PHL § 2801-d, damages in an amount to be determined at trial and punitive damages, together with costs, disbursements, and attorney's fees in this action;
- c. For injunctive relief prohibiting Defendants' deprivations of the Facility's residents' rights under New York and federal law;
- d. For restitution and any other monetary relief permitted by law;
- e. For attorneys' fees and costs; and
- f. For such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff, individually and on behalf of the Class, demands a trial by jury as to all issues triable of right.

Dated: October 22, 2024
White Plains, New York

Respectfully Submitted,

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**

By: /s/Jeremiah-Frei-Pearson

Jeremiah Frei-Pearson

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Attorneys for Plaintiff and the Putative Class

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

I, the undersigned, am an attorney admitted to practice in the Courts of the State of New York and say that:

I am an attorney of record for the Plaintiff and proposed Class. I have read the annexed Summons and Class Action Complaint and know the contents thereof, and the same are true to my knowledge, except those matters therein which are based on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based on the contents of the file. The reason I make this affirmation instead of Plaintiff is because Plaintiff resides outside the county in which I have my office.

Dated: October 22, 2024
White Plains, New York

/s/Jeremiah-Frei-Pearson
Jeremiah Frei-Pearson
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