

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	)	
	)	Chapter 11
LAVIE CARE CENTERS, LLC, <i>et al.</i> ,	)	Case No. 24-55507-PMB
Debtors, <sup>1</sup>	)	(Jointly Administered)
	)	
541 OLD CANOE CREEK RD OPCO LLC,	)	Adversary Proc. No. 25-_____
Plaintiff,	)	
	)	
v.	)	
	)	
RACHAEL SHELLER-ALVAREZ,	)	
as personal representative of the estate of	)	
DOROTHY ROSLYN SHELLER,	)	
Defendant.	)	
	)	

**COMPLAINT**

541 Old Canoe Creek Rd Opco LLC (“Plaintiff” or “541 Opco”) files this adversary proceeding (the “Adversary Proceeding”) pursuant to Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) for declaratory and injunctive relief against

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<sup>1</sup> The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these Chapter 11 Cases, and pending the Effective Date of the Plan, they are being jointly administered for procedural purposes. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, Georgia 30338.



Rachael Sheller-Alvarez, as personal representative of the estate of Dorothy Roslyn Sheller (“Defendant” or “Ms. Sheller-Alvarez”), and states as follows:

**NATURE OF THE ACTION**

1. In these consolidated Chapter 11 proceedings (the “Chapter 11 Cases”), the Court confirmed a Chapter 11 Plan (the “Plan”) that was the product of significant negotiations between the main constituents, including the above-captioned debtors (the “Debtors”) and the Official Committee of Unsecured Creditors (the “Committee”).

2. The Plan provides that any estate claims that survive the Effective Date will become the exclusive property of the Reorganized Debtors, other than the D&O Claims, which will be transferred to the GUC Trust.<sup>2</sup>

3. On November 1, 2023, 541 Opco entered into an agreement to take over operations from one of the Debtors herein—4641 Old Canoe Creek Rd Opco LLC (“4641 Old Canoe”)—under an Operations Transfer Agreement (the “OTA”). The OTA became effective on December 1, 2023.

4. The OTA provided that 4641 Old Canoe would indemnify 541 Opco from any loss arising from any third-party tort claim resulting from the operation of the related facility prior to December 1, 2023.

5. On November 30, 2023, Ms. Sheller-Alvarez filed a lawsuit in the Ninth Judicial Circuit in and for Orange County, Florida (the “State Court”) against 4641 Old Canoe, alleging

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them under the Plan.

claims for negligence and wrongful death based on events that occurred in December 2022, nearly a year prior to the effective date of the OTA (the “State Court Action”).

6. In March 2025, Ms. Sheller-Alvarez amended the State Court Action to add 541 Opco as a defendant.

7. As amended, the State Court Action now seeks a declaration that 541 Opco is liable as the successor of 4641 Old Canoe, and a judgment against 541 Opco for allegedly aiding and abetting fraud as the transferee of an alleged fraudulent transfer by 4641 Old Canoe (the “State Court Claims”).

8. The State Court Claims advanced by Ms. Sheller-Alvarez against 541 Opco are general claims that belong to the Debtors’ estates, and not to Ms. Sheller-Alvarez. Therefore, pending the Effective Date of the Plan, the State Court Claims are subject to the automatic stay under 11 U.S.C. § 362.

9. Upon the Effective Date of the confirmed Plan, the State Court Claims will either be released or become the exclusive property of the Reorganized Debtors, free and clear of liens, claims, and encumbrances.

10. Ms. Sheller-Alvarez’s pending attempt to litigate the State Court Claims against 541 Opco threatens to undermine the complex global resolution negotiated by the parties to the Chapter 11 Cases following extensive mediation efforts.

11. 541 Opco thus brings this Adversary Proceeding to request that the Court:

A. declare that (i) prior to the Effective Date of the Plan, the State Court Claims brought by Ms. Sheller-Alvarez against 541 Opco in the State Court are stayed; and (ii) after the

Effective Date of the Plan, the State Court Claims brought by Ms. Sheller-Alvarez against 541 Opco will belong exclusively to the Reorganized Debtors, to the extent that they are not released;

B. enjoin the prosecution of the State Court Claims asserted by Ms. Sheller-Alvarez against 541 Opco; and

C. award all such other and further relief, at law or in equity, that this Court deems just and proper.

### **JURISDICTION AND VENUE**

12. The Court has jurisdiction over this Adversary Proceeding under 28 U.S.C. § 1334(b) and the jurisdiction-retention provisions in (a) the confirmed Plan, including Article XI.A.2, 13 and 16 thereof, Main Case, ECF No. 730 at 109–10<sup>3</sup>; and (b) the *Findings of Fact, Conclusions of Law, and Order Approving on Final Basis and Confirming Debtors' Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* (the “Confirmation Order”), including Section PP and ¶ 65 thereof, Main Case, ECF No. 735 at 33, 77.

13. This is a core proceeding under 28 U.S.C. § 157(b).

14. Pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure, Plaintiff consents to the entry of final orders or judgment by this Court in this Adversary Proceeding.

15. Venue is proper under 28 U.S.C. § 1409.

16. The legal predicates for the relief requested herein are §§ 105(a), 362(a), 541(a), and 1141 of the United States Bankruptcy Code (the “Bankruptcy Code”); Rules 7001 and 7065

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<sup>3</sup> References to “Main Case, ECF No.” refer to the docket entry numbers of documents filed in the main bankruptcy case of *In re LaVie Care Centers, LLC*, and its affiliates, jointly administered at Case No. 24-55507-PMB.



of the Bankruptcy Rules; the Second Amended and Restated General Order No. 26-2019, Procedures for Complex Chapter 11 Cases, dated February 6, 2023, entered by the United States Bankruptcy Court for the Northern District of Georgia; and the Confirmation Order.

17. Plaintiff has made no prior application for the relief requested herein before any court.

### **PARTIES**

18. Plaintiff 541 Old Canoe Creek Rd Opco LLC is a Florida limited liability company with its principal place of business at 338 Whitesville Road, Jackson, New Jersey 08527.

19. Defendant Rachael Sheller-Alvarez is a Florida resident who serves as the personal representative of the estate of Dorothy Roslyn Sheller.

20. At the time of her death, Dorothy Roslyn Sheller was a Florida resident.

### **FACTUAL BACKGROUND**

#### ***The Chapter 11 Cases***

21. On June 2, 2024 (the “Petition Date”), each of the Debtors, including 4641 Old Canoe, filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division.

22. On June 3, 2024, the Court entered an order authorizing procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

23. As relevant here, the Debtors in the Chapter 11 Cases include LaVie Care Centers, LLC (“LaVie Care”), in Case No. 24-55507-PMB; and 4641 Old Canoe, in Case No. 24-55684-PMB.

***541 Opco and the OTA***

24. On December 1, 2023, approximately seven months before the Petition Date, Plaintiff assumed operational control over a nursing home facility—located in St. Cloud, Florida, and known as the Plantation Bay Rehabilitation Center (“Plantation Bay”)—from Debtor 4641 Old Canoe pursuant to the OTA.

25. The OTA provides 541 Opco with indemnification rights against 4641 Old Canoe from any loss arising from any tort claim made by any third party as a result of the operation of Plantation Bay prior to the effective date of the OTA, which occurred on or around December 1, 2023.

26. Pursuant to the OTA, LaVie Care guaranteed 4641 Old Canoe’s indemnification obligation.

***Ms. Sheller-Alvarez Commences the State Court Action Against 4641 Old Canoe***

27. On November 30, 2023, Ms. Sheller-Alvarez filed the State Court Action, captioned *Rachael Sheller-Alvarez, as Personal Representative of the Estate of Dorothy Roslyn Sheller v. 4641 Old Canoe Creek Road Operations LLC d/b/a Plantation Bay Rehabilitation Center et al.*, Case No. 2023-CA-017213-O.

28. In the State Court Action, Ms. Sheller-Alvarez alleges: (a) that Dorothy Roslyn Sheller (“Ms. Roslyn Sheller”) was a resident of Plantation Bay between December 16, 2022 and December 19, 2022; (b) that, during Ms. Roslyn Sheller’s residency, the Plantation Bay staff failed to adequately care for her, including by not providing her with a wheelchair and not taking sufficient fall-risk precautions; (c) that Ms. Roslyn Sheller suffered multiple falls during her

residency at Plantation Bay; and (d) that Ms. Roslyn Sheller passed away on December 20, 2022, due to trauma sustained in a fall the previous day.

29. Ms. Sheller-Alvarez has prosecuted the State Court Action solely in her capacity as the personal representative of the estate of her late mother, Ms. Roslyn Sheller.

30. 541 Opco was not originally named in the State Court Action inasmuch as the alleged negligence occurred about 11 months before 541 Opco entered into the OTA with 4641 Old Canoe.

31. On June 3, 2024, LaVie Care and 4641 Old Canoe filed a Suggestion of Bankruptcy in the State Court Action.

32. The Suggestion of Bankruptcy advised the participants in the State Court Action about the commencement of the Chapter 11 Cases and the application of the automatic stay to the prosecution of claims against 4641 Old Canoe and LaVie Care.

***Healthcare Recovery Adversary Proceeding***

33. On June 30, 2024, the Debtors, including LaVie Care and 4641 Old Canoe, filed an adversary proceeding against Healthcare Negligence Settlement Recovery Corp. (“Healthcare Recovery”). See *LaVie Care Centers, LLC, et al. v. Healthcare Negligence Settlement Recovery Corp.*, Adversary Proc. No. 24-05127 (the “Healthcare Recovery Adversary”).

34. Healthcare Recovery was formed to amalgamate approximately 100 personal injury claimants that had settled personal injury claims against various Debtors, so that they could assert claims against the Debtors and non-Debtors prior to the Petition Date in Florida state court—including claims for successor liability and fraudulent transfer.

35. A primary purpose of the Healthcare Recovery Adversary was to enjoin Healthcare Recovery from pursuing non-Debtors under theories of successor liability and fraudulent transfer on the basis that such claims were property of the Debtors' estates and thus subject to the automatic stay under 11 U.S.C. § 362. *See, e.g.*, Healthcare Recovery Adversary, ECF No. 1 at ¶ 86.<sup>4</sup>

36. On July 25, 2024, the Court entered an order granting the Debtors a preliminary injunction. In the order, the Court ruled that the claims and causes of action asserted by Healthcare Recovery against the Debtor and non-Debtor defendants in Florida state court, including those for successor liability and fraudulent transfers, belonged to the Debtors' estates. Therefore, this Court determined that the automatic stay precluded Healthcare Recovery from pursuing such claims. *See* Healthcare Recovery Adversary, ECF No. 16 at 4.

***Proofs of Claims Filed by 541 Opco and Ms. Sheller-Alvarez***

37. On August 29, 2024, 541 Opco filed a proof of claim against 4641 Old Canoe alleging a general unsecured claim in an unknown amount based on its indemnification rights under the OTA.

38. On August 29, 2024, 541 Opco filed a proof of claim against LaVie Care alleging a general unsecured claim in an unknown amount based on that entity's guarantee of 4641 Old Canoe's indemnification obligations under the OTA.

39. On August 30, 2024, Ms. Sheller-Alvarez filed a proof of claim against 4641 Old Canoe alleging a general unsecured claim in the amount of \$10,000,000.

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<sup>4</sup> References to "Healthcare Recovery Adversary, ECF No." refer to the docket entry numbers of documents filed in the adversary proceeding *LaVie Care Centers, LLC, et al. v. Healthcare Negligence Settlement Recovery Corp.*, docketed at Case No. 24-05127-PMB.

40. On August 30, 2024, Ms. Sheller-Alvarez filed a proof of claim against LaVie Care alleging a general unsecured claim in the amount of \$10,000,000.

***The Plan and Confirmation Order***

41. On December 4, 2024, the Debtors filed their Modified Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization (the “Plan”). *See* Main Case, ECF No. 730.

42. The Plan assigns all Causes of Action that are not released upon the Effective Date to the Reorganized Debtors, other than the D&O Claims, which will be transferred to the GUC Trust. *See*, Main Case, ECF No. 730 at 53 (“As part of the global settlement, the Debtors have agreed to assign D&O Claims to the GUC Trust (up to the applicable policy limits) and subject to the limitation discussed herein. All other Causes of Action will either be released, waived, or settled under the Plan or otherwise revert to the Reorganized Debtors.”). *See* Main Case, ECF No. 730 at 53.

43. To accomplish this exclusive assignment of surviving claims, the Plan provides, among other things, that:

A. “Causes of Action” is defined to encompass all claims owned by the Debtors and/or their estates, including claims for “any alter ego or successor liability theories” based on events prior to the Effective Date, as well as “any Avoidance Action or state law fraudulent transfer claim.” *Id.* at 24; and

B. “[A]ll Causes of Action . . . shall transfer to each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances.” *Id.* at 85.

44. On December 5, 2024, the Court entered the Confirmation Order.

45. The Confirmation Order provides, among other things, that:

A. The Plan is approved in its entirety and confirmed pursuant to Bankruptcy Code § 1129. Main Case, ECF No. 735 at 36.

B. “The Plan constitutes a motion under Bankruptcy Rule 9019 for approval of the settlement contained therein (the ‘Settlement’). The evidence adduced at the Combined [Plan and Disclosure Statement] Hearing and the record in these Chapter 11 Cases establishes that the complexity of the Debtors’ Chapter 11 Cases necessitate a global resolution among the Debtors, the Committee, the Plan Sponsor, the DIP Lenders, and Omega. . . . The litigation of any of the contested issues, including the potential claims and causes of action that were the primary focus of the parties’ mediation efforts, would have been costly and time consuming with uncertain outcomes or likelihood of success, thereby reducing the Debtors’ liquidity and value otherwise available for creditor recoveries. Each component of the Settlement is an integral, integrated, and inextricably linked part of the Plan, as without the Settlement, the Plan is not feasible. The Plan incorporates the terms of the Settlement . . . . Therefore, pursuant to Bankruptcy Code sections 105, 363, and 1123(b)(3) and Bankruptcy Rule 9019, on the Effective Date, the Settlement, shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies resolved pursuant to the Settlement.” *Id.* at 28–29.

C. “[A]ll Causes of Action . . . (other than the GUC Contribution and the D&O Claims) shall transfer to each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances.” *Id.* at 44.

D. “Pursuant to Bankruptcy Code section 1141 and the other applicable provisions of the Bankruptcy Code, on or after entry of this Confirmation Order and subject to the

occurrence of the Effective Date, the provisions of the Plan (including the exhibits and schedules thereto and all documents and agreements executed pursuant thereto or in connection therewith, including those contained in the Plan Supplement) and this Confirmation Order shall bind the Debtors, the Reorganized Debtors, the GUC Trust, all Holders of Claims against and Interests in the Debtors (irrespective of whether such Claims or Interests are Allowed, Disallowed, or Impaired under the Plan or whether the Holders of such Claims or Interests accepted or are deemed to have accepted the Plan), . . . any Entity making an appearance in the Chapter 11 Cases, all parties that filed objections to confirmation of the Plan, any other party-in-interest in the Chapter 11 Cases, and the respective heirs, executors, administrators, successors, or assigns, if any, of any of the foregoing.” *Id.* at 79 (emphasis added).

E. “Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays in effect in these Chapter 11 Cases pursuant to Bankruptcy Code sections 105 or 362 or any order of the Court shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Confirmation Order (including the Injunction) shall remain in full force and effect in accordance with their terms.” *Id.* at 81.

***Ms. Sheller-Alvarez Asserts the State Court Claims Against 541 Opco***

46. Following the entry of the Confirmation Order, on December 20, 2024, Ms. Sheller-Alvarez moved to amend her complaint to add 541 Opco as a defendant to the State Court Action, and assert the State Court Claims against 541 Opco for (a) successor liability and (b) aiding and abetting fraud, based on the allegedly fraudulent transfer of assets to 541 Opco under the OTA.

47. Inasmuch as 541 Opco was not a party to the State Court Action, it did not have an opportunity to respond to Ms. Sheller-Alvarez’s motion to amend.

48. On March 5, 2025, Ms. Sheller-Alvarez’s motion to amend was granted. As a result, the First Amended Complaint and Demand for Jury Trial (the “Amended State Complaint”) was docketed in the State Court Action on March 5, 2025. A copy of the Amended State Complaint is attached as **Exhibit A** hereto.

49. Count XIII of the Amended State Complaint is titled “Declaratory Judgment of Successor Liability,” and seeks a declaration that 541 Opco is liable as 4641 Old Canoe’s successor. Ex. A at ¶¶ 204–14.

50. In substance, Count XIII is a general claim that 541 Opco is an alleged successor of 4641 Old Canoe and is liable for 4641 Old Canoe’s obligations.

51. Count XIV of the Amended State Complaint is titled “Aiding and Abetting Fraud,” and seeks to hold 541 Opco liable because “Defendant 4641 [Old Canoe] has committed fraud against [Ms. Sheller-Alvarez] in the form of a fraudulent transfer transaction with 541 Opco.” *Id.* at ¶¶ 215–20.

52. Ms. Sheller-Alvarez further alleges that 541 Opco “knowingly and/or intentionally provided substantial assistance” to 4641 Old Canoe in connection with the alleged fraudulent transfer received by 541 Opco. *Id.* at ¶ 219.

53. In substance, Count XIV is a fraudulent transfer claim brought by a general creditor of 4641 Old Canoe, Ms. Sheller-Alvarez, against an alleged transferee, 541 Opco.

54. 541 Opco has not responded to the Amended State Complaint, nor has it engaged in any discovery in the State Court Action.



**CAUSES OF ACTION**

**Count I – Declaratory Relief**

55. The allegations set forth in Paragraphs 1 to 54 above are incorporated herein by reference.

56. 541 Opco maintains that, under bankruptcy law, prior to the Effective Date of the Plan, the State Court Claims are the exclusive property of the Debtors' estates, subject to the automatic stay under Bankruptcy Code § 362(a)(3).

57. Indeed, this Court effectively made that determination in the Healthcare Recovery Adversary.

58. As this Court decided in the Healthcare Recovery Adversary, causes of action such as the State Court Claims are property of each Debtor's bankruptcy estate, and any attempt by a third party to commence, continue to prosecute, or settle such claims during the pendency of the Chapter 11 Cases constitutes an act to control property of the Debtors' estates in violation of the automatic stay.

59. The Court made a similar finding in the Confirmation Order.

60. The Confirmation Order confirmed the Plan in its entirety, including those provisions (a) defining the term "Causes of Action" as actions belonging to the Debtors, including claims for successor liability and fraudulent transfer; and (b) determining that such Causes of Action would be transferred to the Reorganized Debtors on the Effective Date, giving the Reorganized Debtors the exclusive right to commence and control such claims, to the extent that they are not released by the Plan.

61. The Confirmation Order also provides that all injunctions or stays in effect in these Chapter 11 Cases pursuant to Bankruptcy Code §§ 105 or 362 or any order of the Court shall remain in full force and effect until the Effective Date.

62. Meanwhile, Ms. Sheller-Alvarez amended the State Court Action to bring the State Court Claims against 541 Opco as if she owns such claims and has the right to bring them both prior to and after the Effective Date of the Plan.

63. Thus, an actual controversy exists between 541 Opco and Ms. Sheller-Alvarez concerning Ms. Sheller-Alvarez's rights with respect to the State Court Claims both prior to and after the Effective Date of the Plan.

64. This Court's entry of a declaratory judgment would clarify and settle legal rights and relations at issue in both this action and the State Court Action.

**WHEREFORE**, 541 Opco respectfully requests that the Court enter a judgment declaring that (a) prior to the Effective Date, the State Court Claims are part of 4641 Old Canoe's bankruptcy estate, and may not be prosecuted by Ms. Sheller-Alvarez without violating the automatic stay; (b) after the Effective Date, the State Court Claims will become the exclusive property of the Reorganized Debtors to the extent that they are not released, and may not be prosecuted by Ms. Sheller-Alvarez; and (c) for such other and further relief that the Court deems proper.

**Count II – Preliminary and Permanent Injunction**

65. The allegations set forth above in Paragraphs 1 through 54 are incorporated herein by reference.

66. A bankruptcy court may enter any order necessary or appropriate to assure the administration of the debtor's bankruptcy estate, including issuing injunctions to enjoin actions against non-debtors.

67. The Court has retained jurisdiction to issue such injunctions as may be necessary or appropriate to restrain interference with the Plan with respect to any Person or Entity.

68. 541 Opco has shown (a) a reasonable likelihood of success on the merits because the State Court Claims belong to the Debtors' estates prior to the Effective Date, and will become the property of the Reorganized Debtors, not Ms. Sheller-Alvarez, upon the Effective Date; (b) a danger of imminent, irreparable harm in the absence of an injunction because continued prosecution of the futile State Court Claims would subvert the Plan compromise; (c) that the balance of equities tips in favor of 541 Opco, as Ms. Sheller-Alvarez would be restrained only from pursuing claims that are not hers to prosecute; and (d) that the public interest in a successful, global resolution of this bankruptcy case, outweighs other competing societal interests, particularly where an injunction would preserve the results of a confirmed plan of reorganization which was heavily negotiated and litigated.

69. The requested injunction is appropriate and essential to the orderly and effective administration of the Chapter 11 Cases.

**WHEREFORE**, 541 Opco respectfully requests that the Court enter injunctive relief barring Ms. Sheller-Alvarez from prosecuting the State Court Claims against 541 Opco, and for such other and further relief that the Court deems proper.

**REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter an order:

(a) declaring that (i) prior to the Effective Date of the Plan, the State Court Claims brought by Ms. Sheller-Alvarez against 541 Opco in the State Court are stayed; and (ii) after the Effective Date of the Plan, the State Court Claims brought by Ms. Sheller-Alvarez against 541 Opco will belong exclusively to the Reorganized Debtors if they are not released;

(b) enjoining the prosecution of the State Court Claims asserted by Ms. Sheller-Alvarez against 541 Opco; and

(c) awarding all such other and further relief, at law or in equity, that this Court deems just and proper.

DATED: April 28, 2025

Respectfully submitted,

/s/ Cameron M. McCord  
Cameron M. McCord  
Georgia Bar No. 143065  
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*Pro Hac Vice Application Pending*

*Counsel for 541 Old Canoe Creek Rd Opco, LLC*

# EXHIBIT A

DEEMED FILED AS OF 12/20/2024 AS PER ORDER ENTERED 3/5/2025

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

RACHAEL SHELLER-ALVAREZ, as  
Personal Representative of the Estate of  
DOROTHY ROSLYN SHELLER,

CASE NO.: 2023-CA-017213-O

Plaintiff,

v.

4641 OLD CANOE CREEK ROAD  
OPERATIONS, LLC, d/b/a PLANTATION  
BAY REHABILITATION CENTER;  
NSPRMC, LLC d/b/a NSPIRE  
HEALTHCARE; LAVIE CARE CENTERS,  
LLC; POURLESSOINS, LLC, d/b/a  
SYNERGY HEALTHCARE SERVICES,  
INC., POWERBACK REHABILITATION,  
LLC., 541 OLD CANOE CREEK RD  
OPCO, LLC.

Defendants.

\_\_\_\_\_ /

**FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Rachael Sheller-Alvarez, as Personal Representative of the Estate of Dorothy Roslyn Sheller, hereby sues Defendants 4641 Old Canoe Creek Road Operations, LLC, d/b/a Plantation Bay Rehabilitation Center ("4641 Operations"); NSPRMC, LLC d/b/a Nspire Healthcare ("Nspire"); Lavie Care Centers, LLC ("LVCC"); Synergy Healthcare Services, Inc. ("Synergy"); PowerBack Rehabilitation, LLC. ("PowerBack"); and 541 Old Canoe Creek Rd Opco, LLC. ("541 Opco") (collectively "Defendants"), for damages and alleges as follows:

**Parties, Jurisdiction, and Venue**

1. This is an action for damages in excess of \$50,000.00 exclusive of costs and interest and otherwise within the jurisdiction of this Court.

2. This action is being brought against Defendants, in part, for violations of Chapter 400, Florida Statutes while Dorothy Roslyn Sheller (“Ms. Sheller”) was a resident at the Defendants’ nursing home facility located at 4641 Old Canoe Creek Road, Saint Cloud, Florida 34769 (this facility is hereinafter referred to as “Plantation Bay”).

3. All conditions precedent to filing this action, including compliance with the notice provisions of Chapter 400, Florida Statutes, have been met or waived.

4. At all times material to this action, Ms. Sheller was a resident of Osceola County, Florida.

5. At all times material to this action, Plaintiff Rachael Sheller-Alvarez (“Mrs. Alvarez”) is and was a resident of Osceola County, Florida.

6. Mrs. Alvarez is the daughter of Ms. Sheller and the Personal Representative of the Estate of Dorothy Roslyn Sheller. Letters of Administration dated May 1, 2023, evidencing Mrs. Alvarez’s authority to bring this action on behalf of the Estate of Dorothy Roslyn Sheller are attached as **Exhibit 1**.

7. The beneficiaries of the Estate of Dorothy Roslyn Sheller are Ms. Sheller’s daughters: Mrs. Alvarez and Leah Sheller Moses.

8. At all times material to this action, 4641 Operations is and was a Florida limited liability company with its principal place of business in Orange County, Florida and with one or more members who reside in Orange County, Florida.

9. At all times material to this action, Nspire is and was a Florida limited liability company with its principal place of business in Orange County, Florida and with one or more members who reside in Orange County, Florida.

10. At all times material to this action, LVCC is and was a Delaware limited



liability company with its principal place of business in Orange County, Florida and with one or more members who reside in Orange County, Florida.

11. At all times material to this action, Synergy is and was a Delaware Corporation with its principal place of business in Fulton County, Georgia, which conducts substantial business in the state of Florida. This Court has personal jurisdiction over Synergy under Fla. Stat. § 48.193 because Synergy: (a) operated, conducted, engaged in, and/or carried on a business in Florida and/or has an office in Florida; (b) committed a tortious act within Florida; and/or (c) caused injuries to persons within Florida arising out of an act or omission by Synergy outside the state while, at or about the time of injury, Synergy was engaged in solicitation or service activities within Florida.

12. At all times material to this action, PowerBack is and was a Pennsylvania Corporation with its principal place of business in Chester County, Pennsylvania, which conducts substantial business in the state of Florida. This Court has personal jurisdiction over PowerBack under Fla. Stat. § 48.193 because PowerBack: (a) operated, conducted, engaged in, and/or carried on a business in Florida and/or has an office in Florida; (b) committed a tortious act within Florida; and/or (c) caused injuries to persons within Florida arising out of an act or omission by PowerBack outside the state while, at or about the time of injury, PowerBack was engaged in solicitation or service activities within Florida.

13. At all times material to this action, 541 Opco is and was a New Jersey Corporation with its principal place of business in Ocean County, New Jersey, which conducts substantial business in the state of Florida. This Court has personal jurisdiction over 541 Opco under Fla. Stat. § 48.193 because 541 Opco: (a) operated, conducted, engaged in, and/or carried on a business in Florida and/or has an office in Florida; (b)



committed a tortious act within Florida; and/or (c) caused injuries to persons within Florida arising out of an act or omission by 541 Opco outside the state while, at or about the time of injury, 541 Opco was engaged in solicitation or service activities within Florida.

14. Venue is appropriate in this jurisdiction as one or more Defendants reside in Orange County, Florida.

**The Defendant Entities and The Nursing Home Facility**

15. From December 16, 2022 until December 19, 2022, Ms. Sheller was a resident of the nursing home facility known as Plantation Bay.

16. During that time, 4641 Operations held the license to operate Plantation Bay.

17. Nspire contracted with, or received a fee from, 4641 Operations to provide the following services at Plantation Bay: hiring or firing of the administrator or director of nursing; controlling or having control over the staffing levels at Plantation Bay; having control over the budget of Plantation Bay; and/or implementing and enforcing the policies and procedures of Plantation Bay.

18. Nspire acts as one of Plantation Bay's management or consulting companies as defined by Fla. Stat. § 400.023.

19. Nspire operated, managed, and/or oversaw Plantation Bay and, as such, owed a duty to Ms. Sheller to exercise reasonable care according to Fla. Stat. § 400.023(5).

20. LVCC contracted with, or received a fee from, 4641 Operations to provide the following services at Plantation Bay: hiring or firing of the administrator or director of nursing; controlling or having control over the staffing levels at Plantation Bay; having

control over the budget of Plantation Bay; and/or implementing and enforcing the policies and procedures of Plantation Bay.

21. LVCC acts as one of Plantation Bay's management or consulting companies as defined by Fla. Stat. § 400.023.

22. LVCC operated, managed, and/or oversaw Plantation Bay and, as such, owed a duty to Ms. Sheller to exercise reasonable care according to Fla. Stat. § 400.023(5).

### **The Legal Labyrinth of Nursing Home Entities**

23. Plantation Bay is one among thousands of nursing homes spread across the country owned and operated by a private equity firm through a series of interrelated affiliate entities.

24. Since 2012, Plantation Bay has been owned and operated by the private equity firm Formation Capital, LLC ("Formation Capital") through its subsidiaries and affiliate entities, including LVCC and Nspire.

25. Plantation Bay is run and managed through a top-down system piloted by Formation Capital.

26. Formation Capital uses a business model popularized by private equity firms known as the "OpCo/PropCo model," wherein the nursing home's operating company (OpCo) is separated from the real estate property company (PropCo) in a series of complicated transactions between entities under the Formation Capital umbrella. This setup leaves the OpCo to pay massive interest payments, rental payments, and other payments to the related entities to make it appear as if the OpCo is losing money or on the brink of insolvency. This, in turn, increases government healthcare reimbursements,

lowers taxes against the OpCo, and prevents creditors from collecting the full amount of their debts due to the high risk of bankruptcy. The PropCo uses this structure to trade the real estate back and forth between related entities and collect profits taxed at a lower rate as capital gains. The OpCo/PropCo structure allows Formation Capital to extract the profits from the nursing homes in its portfolio, reduce or eliminate tax liability, and protect against potential creditors, including tort creditors like Plaintiff.

27. Formation Capital's strategy reaches beyond corporate restructuring, however, as the firm also implements significant cost-saving measures and self-dealing across the nursing home facilities in its portfolio to maximize profits, often at the expense of resident care. Formation Capital, principally through affiliate companies like LVCC and Nspire, seeks to achieve maximum capacity at each nursing home while reducing staffing levels as much as possible. By 2018, according to a survey conducted by the *Naples News*, LVCC ran nearly 50% of the 54 worst run nursing homes in the state of Florida, and 55 of its 77 statewide facilities were in danger of losing their licenses.

28. While the intentional understaffing inevitably leads to poor resident outcomes and, ultimately, increased litigation, the Formation Capital restructuring strategy often makes litigation untenable. Litigants are forced to settle or risk receiving a small fraction of any judgment against the nursing home entity in bankruptcy.

29. This is not just an unfortunate side effect of a corporate technicality, but an intentional strategy to avoid accountability and maximize investment profits. Arnold Whitman, the Founder and Chairman of Formation Capital, made this clear in a 2007 interview with *The New York Times*, stating that "[l]awyers were suing nursing homes because they knew the companies were worth billions of dollars, so we made the



companies smaller and poorer, and the lawsuits have diminished.”<sup>1</sup>

30. Plantation Bay is no exception. The operating company, 4641 Operations, holds the license to operate the nursing home. The property and buildings are owned by a Formation Capital subsidiary called FC Encore St. Cloud, LLC. 4641 Operations pays rent and other property-related expenses to an ever-changing list of Formation Capital entities at exorbitant rates far above the fair market value.

31. 4641 Operations also pays substantial administrative, management, and consulting fees to other Formation Capital entities, principally LVCC, Synergy, and Nspire.

#### **The Formation Capital Facility Management Model**

32. The nursing facilities owned, operated, and managed by Formation Capital, LVCC, and Nspire, including Plantation Bay, derive almost all of their revenue from government healthcare programs like Medicare and Medicaid.

33. The decisions regarding facility resident admissions, discharges, staffing levels, equipment and supplies, and budgets are made through these managing entities and the policies they implement. These decisions are often driven not by whether the facilities will be able to meet resident needs, but by the amount that would be paid to care for the residents.

34. Medicare reimburses at a higher rate for residents with higher acuity because the cost of providing care is higher for a resident with greater needs. The policy underlying this practice is that the additional funds will be used to provide additional

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<sup>1</sup> Charles Duhigg, *At Many Homes, More Profit and Less Nursing*, THE NEW YORK TIMES (Sept. 23, 2007), <https://www.nytimes.com/2007/09/23/business/23nursing.html>

necessary care, including higher staffing levels needed for residents who require close supervision.

35. Upon information and belief, LVCC and Nspire implemented a policy requiring affiliate facilities, including Plantation Bay, to admit a high volume of higher acuity nursing home residents like Ms. Sheller. Yet, to increase profitability, facilities like Plantation Bay were directed not to increase staffing levels or other budget expenditures necessary to meet the needs of the higher acuity residents.

36. This strategy allowed Formation Capital and its affiliates to pocket the increased tax-payer funding while placing the facility residents at higher risk of injury and poor outcomes.

37. Upon information and belief, LVCC and Nspire implemented a policy that required affiliate facilities, including Plantation Bay, to enter into contracts or service agreements, directly or indirectly, with other affiliates under common control to provide administrative services. Synergy is one of these affiliates, which, through contracts with LVCC, provides healthcare administrative services to Plantation Bay and its licensee, 4641 Operations.

38. At all times material to this action, upon information and belief, Synergy received substantial fees from 4641 Operations to provide medical record administration services to Plantation Bay, including data security and resident medical record practices, procedures, and protocols.

#### **Operation and Management of Plantation Bay**

39. Plantation Bay is managed and operated by a series of entities with varied roles, responsibilities, and levels of control.

40. 4641 Operations holds the license, employs the nursing and administrative staff, and operates Plantation Bay on a day-to-day basis. Functions such as resident care plans, staffing assignments, and direct execution of company policies are handled by the licensee.

41. Nspire and LVCC control company-wide management matters, such as contracting, financial reporting, facility safety protocols, training initiatives, staffing levels, and creation and implementation of company policies.

42. These entities exercise significant control over Plantation Bay.

43. Upon information and belief, Nspire and LVCC exercised their control and implemented their policies in such a way that Plantation Bay was regularly left understaffed and without adequate nurses and certified nursing assistants to meet the level of care required by its residents. This placed Plantation Bay's residents at significant risk of injury, death, and poor care.

#### **Dorothy Sheller's Stay at Plantation Bay**

44. In December 2022, Ms. Sheller was a 77-year-old woman living independently in a senior community in Kissimmee, Florida. Ms. Sheller suffered from cirrhosis of the liver and required the use of a walker or wheelchair due to general weakness.

45. On December 12, 2022, Ms. Sheller began to exhibit confusion and agitation during a visit from her son-in-law, which is a symptom of cirrhosis caused by high levels of ammonia.

46. Her son-in-law took her to Orlando Health hospital to receive treatment, and Ms. Sheller was admitted to the hospital and treated for elevated ammonia levels. The

treatment successfully brought Ms. Sheller's ammonia levels down and her confusion subsided after a few days.

47. When Ms. Sheller was ready for discharge, she and her family requested a referral to a nursing home for post-acute care instead of being discharged home. Ms. Sheller and her family wanted to make sure that she would be placed in a facility that could provide the higher level of care and close monitoring Ms. Sheller needed during her recovery.

48. Ms. Sheller was ultimately referred to Plantation Bay and was admitted on December 16, 2022.

49. At the time of her admission, Ms. Sheller required a wheelchair for mobility due to significant weakness associated with her condition. She was prescribed medication for her cirrhosis that caused her to use the bathroom with greater frequency, which, in turn, necessitated close supervision during toilet transfers to prevent falls.

50. Ms. Sheller's condition placed her at significant risk of falls and close monitoring was necessary for her safety.

51. A Plantation Bay nursing employee performed an admission assessment of Ms. Sheller to assess her treatment needs at the facility, ensure urgent interventions were taken, and collect the information necessary for the creation of a baseline care plan.

52. The admission assessment was inaccurate, incomplete, and otherwise deficient.

53. The admission nurse noted that Ms. Sheller was unable to walk due to significant weakness and at very high risk of falls, but failed to provide Ms. Sheller with a wheelchair or any assistive device and failed to initiate any fall prevention interventions



that were needed.

54. Plantation Bay's management team failed to review the admission assessment to ensure it was adequate, and, thus, none of the necessary fall prevention interventions were ordered or provided, including a wheelchair.

55. Ordinarily, glaring deficiencies in the admission paperwork not fixed by subsequent review would be corrected when the facility puts together the resident's baseline care plan. When the unit manager created and signed Ms. Sheller's baseline care plan, however, he not only failed to correct the issues, but failed to address Ms. Sheller's fall risk or risk of increased confusion due to her underlying condition at all. Despite failing to incorporate the most critical information provided in the otherwise incomplete admission assessment, the unit manager certified that he had evaluated Ms. Sheller's medical chart prior to completing the care plan.

56. Following the completion of the baseline care plan, the unit manager and the Plantation Bay director of nursing falsely certified a "Consent to Treat" for Ms. Sheller, knowingly misrepresenting that Mrs. Alvarez had been advised of her mother's care plan over the phone and consented to the treatment. In fact, Mrs. Alvarez was never called and was never advised of her mother's care plan.

57. As a result of these failures, Ms. Sheller was never provided a wheelchair and appropriate fall risk precautions were not put in place for her safety.

58. Over the next few days, Ms. Sheller was seen by nursing staff on several occasions attempting to use her bedside table to ambulate to the bathroom and other areas in the facility. None of the nursing staff ever provided a wheelchair or corrected her care plan to include the requisite interventions, despite recognizing Ms. Sheller clearly



needed them.

59. Ms. Sheller began to exhibit increased confusion over this time, which is a sign that her cirrhosis had become uncontrolled. The Plantation Bay nursing staff noted this confusion several times, but never took the appropriate measures to address the issue.

60. It was apparent to Plantation Bay that Ms. Sheller required close supervision and monitoring to ensure her safety, but this was never ordered because the facility was so understaffed that close monitoring of even a single resident was untenable.

61. When the Plantation Bay Director of Nursing was directly confronted about Ms. Sheller's increased confusion and serious ambulatory issues, she ordered a psychological consultation instead of ordering close monitoring, providing a wheelchair, or implementing fall prevention precautions. No psychological consultation ever occurred.

62. During her stay at Plantation Bay, Ms. Sheller was also evaluated and treated by occupational therapists employed by PowerBack, Plantation Bay's in-facility therapy provider.

63. PowerBack is a therapy services company that employs and contracts therapy professionals, including occupational therapists, physical therapists, therapy assistants, and administrative specialists known as Directors of Rehabilitation.

64. From 2019 through 2023, PowerBack was engaged as the sole and exclusive provider of clinical therapy and rehabilitative services to residents at Plantation Bay. Pursuant to its agreement with 4641 Operations and Plantation Bay, PowerBack's services included: physical therapy, occupational therapy, resident screenings upon admission, care plan participation, participation in clinical meetings for the purpose of falls

prevention, daily admission meetings, provision of information to complete resident's minimum data set, and regular reporting of key metrics, among other services. Under the same agreement, PowerBack was obligated to provide these services in accordance with professional standards and federal and state regulations and guidelines.

65. PowerBack occupied a space within the Plantation Bay facility and its therapists and staff provided direct care to facility residents like Ms. Sheller.

66. PowerBack also employed a Director of Rehabilitation who was embedded with the facility as part of the Plantation Bay management team. The Director of Rehabilitation was responsible for, among other things: implementing and enforcing policies and procedures, training employees on policies and procedures, and facilitating communication and coordination between the PowerBack therapy staff and nursing staff.

67. During her stay, Ms. Sheller received care from two of PowerBack's occupational therapy employees: occupational therapist Kerby Nozil ("Mr. Nozil") and occupational therapy assistant Janae Schafer ("Ms. Schafer").

68. Mr. Nozil performed an occupational therapy evaluation and provided direct therapy care to Ms. Sheller on December 18, 2022 at Plantation Bay.

69. Mr. Nozil assessed Ms. Sheller's ability to safely accomplish daily tasks, including toileting hygiene, bathing, toilet transfers, and dressing. Mr. Nozil determined that Ms. Sheller would need substantial or maximal assistance with each of these tasks. Mr. Nozil also noted her balance, gait, strength, and safety awareness were impaired. In assessing her balance, he noted that Ms. Sheller could not stand for even 10 seconds without support. Ms. Sheller did not have a wheelchair or other assistive device at the time of her treatment by Mr. Nozil.

70. Despite these clear red flags, however, Mr. Nozil failed to take any action to implement the necessary interventions to ensure Ms. Sheller's safety. He did not ensure she was provided with a wheelchair or walker; he did not communicate her need for one to any other member of the healthcare team; and he did not communicate to her caregivers that she could not get to the bathroom or transfer to the toilet safely.

71. Ms. Schafer provided direct therapy care to Ms. Sheller on December 19, 2022.

72. On information and belief, Ms. Schafer had access to Ms. Sheller's prior therapy evaluations, which stated her clear deficits in balance, gait, strength, and safety awareness. Nonetheless, Ms. Schafer undoubtedly observed these deficits during the therapy session and recognized that Ms. Sheller did not have a wheelchair, walker, or other assistive device.

73. Ms. Schafer similarly failed to take any action to implement the necessary interventions to ensure Ms. Sheller's safety. She did not ensure she was provided with a wheelchair or walker; she did not communicate her need for one to any other member of the healthcare team; and she did not communicate to her caregivers that she could not get to the bathroom or transfer to the toilet safely.

74. Due to these failures, Ms. Sheller suffered multiple falls in less than 72 hours at Plantation Bay.

75. Despite knowledge of these falls, Plantation Bay failed to report or document any of them, did not notify Ms. Sheller's family, and did not have her evaluated by a physician or take her to the hospital.

76. Even after multiple falls, Plantation Bay inexplicably did not provide Ms.



Sheller with a wheelchair and never implemented the close supervision or adequate fall precautions that her condition called for.

77. On December 19, 2022, Ms. Sheller fell and hit her head while attempting to use the bathroom. She was found unresponsive on the bathroom floor among her own blood and excrement. Ms. Sheller died in the hospital the next day from a subdural hematoma due to blunt head trauma.

78. 4641 Operations—as the licensee of Plantation Bay—and Nspire and LVCC—as the nursing home management and consulting companies or entities otherwise participating in Plantation Bay’s decision making or operations—owed Ms. Sheller duties of care as a resident of Plantation Bay, including but not limited to the following:

- a. To treat her according to accepted standards of care for nursing homes;
- b. To take reasonable measures to prevent against violations of her resident’s rights under Fla. Stat. § 400.022;
- c. To ensure adequate training and supervision of the respective employees, agents, and consultants such that Ms. Sheller is provided care and services in a safe and beneficial manner;
- d. To provide adequate nursing staff, on a 24-hour basis; and/or
- e. To ensure the provision of nursing and related services to Ms. Sheller in a manner that maintains the highest practicable physical, mental, and psychological well-being as determined by Ms. Sheller’s assessments, individual plan of care, and needs.

79. 4641 Operations, Nspire, and LVCC breached their duties to Ms. Sheller in one or more ways, including but not limited to the following:

- a. failing to provide Ms. Sheller with adequate and appropriate health care and protective and support services;
- b. failing to provide Ms. Sheller with adequate and appropriate therapeutic and rehabilitative services;
- c. failing to treat Ms. Sheller courteously, fairly, and with the fullest measure of dignity;

- d. failing to inform Ms. Sheller, or her family, in writing and orally, prior to or at the time of admission and during her or her stay, of services available in the facility;
- e. failing to keep Ms. Sheller, or her family, adequately informed of her medical condition and proposed treatment;
- f. failing to develop or prepare an adequate care plan for Ms. Sheller;
- g. failing to adequately monitor Ms. Sheller;
- h. failing to have Ms. Sheller timely transferred to an acute care hospital;
- i. failing to properly evaluate Ms. Sheller for continued placement at the facility or transfer to a hospital despite a continuing obligation to provide such evaluation;
- j. failing to protect the dignity of Ms. Sheller;
- k. failing to properly train (to include but not be limited to failing to provide adequate and sufficient orientation and in-service training), supervise, monitor performance, and control the facility staff and consultants to meet the needs of the residents;
- l. failing to protect Ms. Sheller from physical, mental, and psychological harm resulting from the injuries detailed above;
- m. failing to conduct sufficient risk management and quality assurance committee meetings to identify clinical risks and issues related to resident care;
- n. failing to properly train and supervise employees, both professional and nonprofessional;
- o. failing to create and/or implement appropriate policies and procedures to ensure protection of resident's rights;
- p. failing to appropriately staff the facility to ensure resident needs and care could be appropriately addressed; and
- q. failing to review incident reports and grievance logs to identify clinical risks and issues related to resident care.

80. PowerBack employees Mr. Nozil and Ms. Schafer—as direct caregivers providing care to a resident in a nursing facility—owed Ms. Sheller duties of care, including but not limited to the following:

- a. To provide adequate and appropriate health care and protective services, including therapeutic and rehabilitative services consistent with established and recognized practice standards within the community;

- b. To treat her courteously, fairly, and with the fullest measure of dignity;
- c. To take reasonable measures to prevent against neglect and other violations of her resident's rights under Fla. Stat. § 400.022; and/or
- d. To ensure the provision of therapy services to Ms. Sheller in a manner that maintains the highest practicable physical, mental, and psychological well-being as determined by Ms. Sheller's assessments, individual plan of care, and needs.

81. Mr. Nozil and Ms. Schafer breached their duties to Ms. Sheller in one or more ways, including but not limited to the following:

- a. failing to provide Ms. Sheller with adequate and appropriate therapeutic and rehabilitative services consistent with established and recognized practice standards within the community;
- b. failing to ensure adequate health care and protective services were provided to Ms. Sheller;
- c. failing to treat Ms. Sheller courteously, fairly, and with the fullest measure of dignity;
- d. failing to develop or prepare an adequate care plan for Ms. Sheller;
- e. failing to adequately monitor Ms. Sheller;
- f. failing to protect Ms. Sheller from physical, mental, and psychological harm resulting from the injuries detailed above;
- g. failing to conduct or participate in risk management and quality assurance committee meetings to identify clinical risks and issues related to resident care; and/or
- h. failing to create and/or implement appropriate policies and procedures to ensure protection of resident's rights.

#### **The State and Federal Investigations**

82. Following Ms. Sheller's death, the incident was investigated both by Florida's Agency for Health Care Administration (AHCA) and the U.S. Department of Health & Human Services: Centers for Medicare & Medicaid Services (CMS).

83. The AHCA and CMS investigators concluded that Plantation Bay violated a series of Federal laws with respect to Ms. Sheller's care, which caused or contributed to her death. The investigations revealed the following deficiencies in Plantation Bay's



care of Ms. Sheller:

- a. Plantation Bay failed to protect Ms. Sheller from abuse;
- b. Plantation Bay failed to develop and/or implement procedures to identify, communicate, and provide necessary care and services to ensure the safety of Ms. Sheller, who was at high risk for falls;
- c. Plantation Bay failed to follow standards of practice related to post-fall response;
- d. Plantation Bay failed to develop and/or implement policies and procedures to prevent abuse and neglect of the residents, including Ms. Sheller;
- e. Plantation Bay failed to create and put into place a plan for meeting Ms. Sheller's most immediate needs within 48 hours of being admitted;
- f. Plantation Bay failed to ensure that the facility provides adequate supervision to prevent accidents; and
- g. Plantation Bay failed to maintain medical records of the residents that were in accordance with accepted professional standards.

84. According to the investigation, many of these failures were traceable to intentional decisions made by management, principally (i) understaffing at the facility; and (ii) a facility-wide electronic medical record system lock-out.

85. The investigation also revealed that the PowerBack employees who evaluated Ms. Sheller and recognized the urgent safety risks failed to communicate these risks to the nursing staff or otherwise implement interventions for Ms. Sheller because PowerBack did not have appropriate protocols in place to address urgent safety issues identified during therapy.

#### **The Synergy Data Breach and Electronic Medical Record Lock-Out**

86. Upon information and belief, prior to Ms. Sheller's admission to Plantation Bay, Synergy became aware of a data security breach of its computer systems and notified LVCC and 4641 Operations.

87. Upon information and belief, before December 16, 2022, Synergy decided

to restrict access to resident medical records, effectively locking members of the Plantation Bay nursing staff out of the electronic medical records system where all the residents' critical care and treatment records were located. The electronic medical records served as the primary resource for the nursing staff to communicate and track updates in each resident's treatment, care plan, and changes in condition.

88. As a consequence of Synergy's decision, the Plantation Bay nursing staff were forced to try to use paper medical records.

89. 4641 Operations, Nspire, and LVCC, however, did not have any systems or procedures in place for Plantation Bay to operate using a paper records system, nor did these entities provide a plan to protect the residents from the potential harms associated with the lack of access to medical records.

90. Making this decision without any contingency plan to account for the safety of the residents placed the residents at serious risk. New admissions like Ms. Sheller were placed at even greater risk, as her care providers were not familiar with her care plan or medical or safety needs.

91. Despite knowledge of the lock-out and the danger it presented to residents, Synergy, Nspire, LVCC, and 4641 Operations failed to notify Ms. Sheller or Mrs. Alvarez upon Ms. Sheller's December 16, 2022 admission or at any time thereafter.

92. The Plantation Bay director of nursing was aware of the significant danger presented by this situation and, in the investigation, admitted that the state of the medical records created an unsafe situation for both residents and nurses.

93. The decision to restrict medical record access substantially contributed to the grossly deficient care Ms. Sheller was subjected to, which ultimately caused her



grievous harm. The deficient and incomplete admission records, care plan, and medical records; the failure to provide Ms. Sheller the wheelchair, close supervision, or fall precautions she required; and the failure to report her prior falls and take corrective action, are all attributable to some extent to this decision.

**Defendants' Scheme to Avoid Liability for Ms. Sheller's Death**

94. Following Ms. Sheller's death and the creation of her Estate, on May 5, 2023, Plaintiff submitted Notices of Intent under Chapter 400 to Defendants 4641 Operations, Nspire, and LVCC, notifying each Defendant of her intent to file this lawsuit.

95. On August 9, 2023, at the request of these Defendants, the parties entered into a joint stipulation to extend the presuit period an additional 90 days to allow additional time for the parties to seek a good faith resolution.

96. After negotiations failed, Plaintiff filed this action on November 30, 2023.

97. As this action progressed, Plaintiff was notified that Defendant 4641 Operations was no longer operating Plantation Bay. As Plaintiff later discovered, the facility's license had been transferred to a "new" operator entity, 541 Opco.

98. 541 Opco, however, is not a new operator in any meaningful sense but merely an instrument employed by 4641 Operations and Formation Capital to avoid liability for Plaintiff's claim.

99. 541 Opco's existence arises from a much broader scheme perpetrated by Formation Capital and its insiders through FC Investors XXI, LLC, the ultimate parent company of 4641 Operations, LVCC, Synergy, and NSPIRE.

100. Formation Capital owns over one hundred nursing facilities throughout the United States. As discussed above, Formation Capital's business strategy is meticulously

optimized to cut costs, limit liabilities, and extract profit, often at the expense of patient care.

101. One such strategy, the OpCo/PropCo structure, ensures that the entities that hold the operating licenses (the primary defendants in any professional negligence action) are kept asset-poor. This strategy alone, however, does not keep the profits generated by the operation out of reach of creditors. Formation Capital uses two primary strategies to solve this: (i) forcing the Opco to pay exorbitant rent and/or interest; and (ii) engaging the Opco in various service contracts with other affiliated entities for large fees.

102. The Plantation Bay Opco, 4641 Operations, paid a significant percentage of gross revenue to Formation Capital subsidiaries LVCC, Nspire, and Synergy. These companies essentially perform the functions of corporate lower level to C-suite management. The operation maintains the traditional business hierarchy of a large corporation, but each level of the hierarchy is its own corporate entity (sometimes multiple entities). This infrastructure ensures that, with each separate legal entity, Formation Capital is afforded an additional layer of protection.

103. Outside of its nursing homes, Formation Capital holds investments across the full spectrum of the elder care industry, including various healthcare service companies. These affiliate companies are often given service contracts with the Opcos, allowing Formation Capital to minimize reliance on outside vendors and control its own ecosystem. One such service company is PowerBack, which provides physical, occupational, and respiratory therapy services to facilities like Plantation Bay.

104. PowerBack is a subsidiary of holding company Genesis Healthcare, Inc. ("Genesis"), one of the nation's largest post-acute care providers. Formation Capital

purchased Genesis in 2007 for around \$1.7 billion. In 2011, Formation Capital (i) transferred all Genesis's operational and management entities to a subsidiary called FC-Gen Operations Investment, LLC ("FC-Gen"), (ii) sold the Genesis real estate facilities to the company Welltower Inc. ("Welltower"), and (iii) entered FC-Gen into a master lease agreement with Welltower to lease back the facilities it had sold.

105. In 2015, Formation Capital took Genesis public through a reverse merger transaction whereby Genesis became a parent company of FC-Gen, which owned and operated substantially all the Genesis subsidiaries, including PowerBack. Formation Capital retained approximately 75% ownership interest in the combined entity.

106. In 2021, after a \$255 million Medicare fraud judgment was reinstated against several other Formation Capital subsidiaries, Formation Capital placed these subsidiaries, including its management company Consulate, in Chapter 11 bankruptcy ("Consulate Bankruptcy"). The petition was filed on March 1, 2021.

107. Just days later, on March 3, 2021, Genesis announced a deal with ReGen Healthcare LLC ("ReGen") whereby ReGen would receive a 25% ownership stake in FC-Gen for \$50 million. ReGen is a subsidiary of another private equity firm, Pinta Capital Partners, co-founded by Joel Landau and David Harrington. In the same announcement, Genesis published the terms of a transaction with Welltower that would grant Welltower a 15% ownership interest in Genesis in exchange for an \$86 million amount to be paid back to Welltower as past-due rent. In another transaction, announced on the same day, Welltower sold 51 of the Genesis real estate facilities to a joint venture between Welltower, Joel Landau's company Aurora Health Network, and Peace Capital, another private equity firm. The joint venture ("Aurora JV") sale totaled \$500 million.



108. Through these transactions, three of the biggest players in the nursing home industry, Formation Capital, Welltower, and Joel Landau, joined forces through their shared interest in FC-Gen/Genesis. Moreover, Formation Capital received a capital infusion that could be used in restructuring the debtor assets in the Consulate Bankruptcy.

109. In the Consulate Bankruptcy, on the same day these transactions were announced, the bankruptcy judge approved a \$5 million secured superpriority loan to the Consulate debtors to continue operations during the pendency of the proceedings. The lender, CPSTN Operations, LLC, was disclosed as an affiliate and insider of the debtors and, thus, Formation Capital.

110. Ultimately, Formation Capital bought back most of the Consulate debtors with a \$3 million credit bid towards the end of 2021, avoiding almost all of its more-than-\$200 million in liabilities.

111. Over the next year, Formation Capital continued operating its nursing facilities, but rebranded its Consulate management operation through multiple new entities, including Synergy and Nspire. The facilities remained overleveraged, undercapitalized, and insufficiently insured and their signature substandard resident care persisted. Consequently, lawsuits continued to accumulate, including this one.

112. The existing business-model ensured that, during this time, any surplus revenues flowing to 4641 Operations were diverted through contracts with other Formation Capital and FC-Gen subsidiaries, including LVCC, Nspire, Synergy, and PowerBack.

113. In early 2023, Formation Capital procured the services of the law firm McDermott Will & Emery LLP to investigate and prepare to run more of its nursing facility

operators through the bankruptcy cycle, this time intending to place 282 of its subsidiaries into a consolidated Chapter 11 bankruptcy proceeding, including Defendants LVCC and 4641 Operations.

114. Over the course of 2023, Formation Capital “divested” from 73 Opcos, including 4641 Operations. These divestitures effectively transferred the fully operational nursing facilities to new LLCs through an Operations Transfer Agreement (“OTA”). Per the OTA for 4641 Operations, the new Opco—541 Opco—would not assume any of the liabilities incurred prior to the effective date of the transfer. The only material asset of 4641 Operations left behind was accounts receivable generated prior to the transfer; however, these were used to pay down a pre-bankruptcy secured loan made by another Formation Capital subsidiary, LV CHC Holdings I, LLC. Through this transaction, 4641 Operations retained all of the liabilities with zero assets.

115. In exchange for inheriting a fully operational nursing facility without any of its liabilities, **541 Opco paid no consideration.**

116. On the same date that this transfer was effectuated, November 1, 2023, the real property and physical facility were sold by the PropCo, FC Encore St. Cloud, LLC., to the company 541 Old Canoe Creek Rd FL Owner, LLC (“541 Owner”). The property was purchased for \$9,093,423.00. None of this consideration flowed to 4641 Operations.

117. 541 Owner is a Delaware corporation with its principal business address located at 885 Third Ave., FLR 29, New York, NY 10022. It was registered in Florida by a company called Aurora Acquisitions LLC with the same listed address. The registration was signed by Joel Landau, co-owner of FC-Gen/Genesis and known insider of Formation Capital.

118. According to a Memorandum of Purchase Option made the same day as the 4641 Operations transfer, 541 Owner is an affiliate of Welltower NNN Group LLC, presumably a subsidiary of Welltower.

119. 541 Opco lists its principal address as 338 Whitesville Rd., Jackson, NJ 08527. This is the address of a company called CCH Healthcare, which is a subsidiary of Peace Capital.

120. Thus, these suspect transactions were all made between insiders and affiliates of Formation Capital, the allegedly “divesting” party.

121. Since these insider transfers occurred, the management company has been changed from “Nspire” to “Aspire.” Plantation Bay has been rebranded as “Aspire at St. Cloud.” Most of the Plantation Bay’s employees and operational contracts were retained, however. The same employees control the facility’s operations, but several have been reshuffled to other facilities.

122. For instance:

- a. Aspire’s Chief Nursing Officer, Debra Mack, held the same position with Nspire up until September of 2023;
- b. Aspire’s Executive Vice President Brian Brinkerhoff was the Vice President of Nspire and Synergy until the same time. Mr. Brinkerhoff was also identified as a “boardmember/officer” of 4641 Operations from 2021 through 2023;
- c. Bryce King, the executive director and safety liaison of Plantation Bay when Ms. Sheller died, now holds the same position for Aspire but has relocated within the state;
- d. Kelsey Cobasky, the administrator and safety liaison of Plantation at the time of the transfer, remained in those same roles at the facility following the transfer as an employee of Aspire.

123. 541 Opco uses the same facilities, employs the same key employees, and operates under the same key contracts and provider agreements as 4641 Operations. It



is evident that the "new" operator of the facility has not run its own race, but merely taken the baton from 4641 Operations (for free) and continued in the relay.

124. It is also evident that 541 Opco was aware of Plaintiff's claim against its predecessor, as the claim is specifically listed in the OTA it executed with its predecessor.

125. The transfer transaction was and is a deliberate scheme to avoid the predecessor's liabilities, including those arising from this lawsuit.

126. Moreover, 541 Opco is not a "new" operator but a continuation of its predecessor, 4641 Operations, and/or a vehicle to fraudulently avoid liability for Plaintiff's claim.

**COUNT I: WRONGFUL DEATH AGAINST 4641 OLD CANOE CREEK ROAD OPERATIONS, LLC**

127. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

128. 4641 Operations, as the licensee of Plantation Bay nursing home, owed duties to Ms. Sheller as a resident at Plantation Bay.

129. These duties are set forth in Fla. Stat. § 400.022 and Fla. Admin Code 59A-4 and are non-delegable.

130. 46741 Operations breached its duties to Ms. Sheller and violated her statutorily mandated nursing home resident's rights.

131. As a direct and proximate cause of 4641 Operations' negligence and/or violations of Ms. Sheller's resident's rights, Ms. Sheller suffered bodily injury and, ultimately, death. Consequently, the Estate of Dorothy Roslyn Sheller and the beneficiaries of the Estate, including Rachael Sheller-Alvarez (daughter) and Leah Sheller Moses (daughter) are entitled to all damages recoverable for the wrongful death

caused by the 4641 Operations, including but not limited to:

- a. Damages for Ms. Sheller's bodily injury, pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, medical expenses, from the time of injury until the time of death;
- b. Medical bills and expenses;
- c. Funeral expenses;
- d. Damages suffered by the survivors of Ms. Sheller including mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against 4641 Old Canoe Creek Road Operations, LLC, and further demands a trial by jury of all issues so triable.

**COUNT II: NON-LETHAL NEGLIGENCE AGAINST 4641 OLD CANOE CREEK ROAD OPERATIONS, LLC**

132. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

133. 4641 Operations, as the licensee of Plantation Bay nursing home, owed duties to Ms. Sheller as a resident at Plantation Bay.

134. These duties are set forth in Fla. Stat. § 400.022 and Fla. Admin Code 59A-4 and are non-delegable.

135. 4641 Operations breached its duties to Ms. Sheller and violated her statutorily mandated nursing home resident's rights.

136. As a direct and proximate cause of 4641 Operations' negligence and/or violations of Ms. Sheller's resident's rights, Ms. Sheller suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, expense of hospitalization, and

medical and nursing care and treatment.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against 4641 Old Canoe Creek Road Operations, LLC, and further demands a trial by jury of all issues so triable.

**COUNT III: WRONGFUL DEATH AGAINST NSPRMC, LLC**

137. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

138. Nspire owed duties to Ms. Sheller as a resident at Plantation Bay.

139. These duties are set forth in Fla. Stat. § 400.022 and Fla. Admin Code 59A-4 and are non-delegable.

140. Nspire breached its duties to Ms. Sheller and violated her statutorily mandated nursing home resident's rights.

141. As a direct and proximate cause of Nspire's negligence and/or violations of Ms. Sheller's resident's rights, Ms. Sheller suffered bodily injury and, ultimately, death. Consequently, the Estate of Dorothy Roslyn Sheller and the survivors of the Estate, including Rachael Sheller-Alvarez (daughter) and Leah Sheller Moses (daughter) are entitled to all damages recoverable for the wrongful death caused by Nspire, including but not limited to:

- a. Damages for Ms. Sheller's bodily injury, pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, medical expenses, from the time of injury until the time of death;
- b. Medical bills and expenses;
- c. Funeral expenses;
- d. Damages suffered by the survivors of Ms. Sheller including mental pain and suffering, loss of support and services, loss of parental

companionship, instruction, and guidance.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against NSPRMC, LLC, and further demands a trial by jury of all issues so triable.

**COUNT IV: NON-LETHAL NEGLIGENCE AGAINST NSPRMC, LLC**

142. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

143. Nspire, as the licensee of Plantation Bay nursing home, owed duties to Ms. Sheller as a resident at Plantation Bay.

144. These duties are set forth in Fla. Stat. § 400.022 and Fla. Admin Code 59A-4 and are non-delegable.

145. Nspire breached its duties to Ms. Sheller and violated her statutorily mandated nursing home resident's rights.

146. As a direct and proximate cause of Nspire's negligence and/or violations of Ms. Sheller's resident's rights, Ms. Sheller suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, expense of hospitalization, and medical and nursing care and treatment.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against NSPRMC, LLC, and further demands a trial by jury of all issues so triable.



**COUNT V: WRONGFUL DEATH AGAINST LAVIE CARE CENTERS, LLC**

147. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

148. LVCC owed duties to Ms. Sheller as a resident at Plantation Bay.

149. These duties are set forth in Fla. Stat. § 400.022 and Fla. Admin Code 59A-4 and are non-delegable.

150. LVCC breached its duties to Ms. Sheller and violated her statutorily mandated nursing home resident's rights.

151. As a direct and proximate cause of LVCC's negligence and/or violations of Ms. Sheller's resident's rights, Ms. Sheller suffered bodily injury and, ultimately, death. Consequently, the Estate of Dorothy Roslyn Sheller and the survivors of the Estate, including Rachael Sheller-Alvarez (daughter) and Leah Sheller Moses (daughter) are entitled to all damages recoverable for the wrongful death caused by LVCC, including but not limited to:

- a. Damages for Ms. Sheller's bodily injury, pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, medical expenses, from the time of injury until the time of death;
- b. Medical bills and expenses;
- c. Funeral expenses;
- d. Damages suffered by the survivors of Ms. Sheller including mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against Lavie Care Centers, LLC, and further demands a trial by jury of all issues so triable.

**COUNT VI: NON-LETHAL NEGLIGENCE AGAINST LAVIE CARE CENTERS, LLC**

152. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

153. LVCC owed duties to Ms. Sheller as a resident at Plantation Bay.

154. These duties are set forth in Fla. Stat. § 400.022 and Fla. Admin Code 59A-4 and are non-delegable.

155. LVCC breached its duties to Ms. Sheller and violated her statutorily mandated nursing home resident's rights.

156. As a direct and proximate cause of LVCC's negligence and/or violations of Ms. Sheller's resident's rights, Ms. Sheller suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, expense of hospitalization, and medical and nursing care and treatment.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against Lavie Care Centers, LLC, and further demands a trial by jury of all issues so triable.

**COUNT VII: WRONGFUL DEATH AGAINST SYNERGY HEALTHCARE SERVICES, INC.**

157. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

158. Synergy owed duties to Ms. Sheller as a resident at Plantation Bay who would foreseeably be placed at risk of harm due to Synergy's negligence in performing medical record administration services to 4641 Operations and Plantation Bay.

159. Synergy owed a duty to Ms. Sheller to exercise reasonable care in refraining



from performing medical record administration services for 4641 Operations and Plantation Bay in such a manner that would place facility residents, such as Ms. Sheller, at foreseeable risk of harm.

160. Synergy breached this duty by locking access to the Plantation Bay electronic medical record system the Plantation Bay residents, including Ms. Sheller, at foreseeable risk of harm.

161. Synergy breached this duty by failing to notify Ms. Sheller or her family of the electronic medical record system lock-out and the increased risk of harm this circumstance presented to Ms. Sheller.

162. As a direct and proximate cause of Synergy's negligence, Ms. Sheller suffered bodily injury and, ultimately, death. Consequently, the Estate of Dorothy Roslyn Sheller and the survivors of the Estate, including Rachael Sheller-Alvarez (daughter) and Leah Sheller Moses (daughter) are entitled to all damages recoverable for the wrongful death caused by the Synergy, including but not limited to:

- a. Damages for Ms. Sheller's bodily injury, pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, medical expenses, from the time of injury until the time of death;
- b. Medical bills and expenses;
- c. Funeral expenses;
- d. Damages suffered by the survivors of Ms. Sheller including mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against Synergy Healthcare Services, Inc., and further demands a trial by jury of all issues so triable.

**COUNT VIII: BREACH OF FIDUCIARY DUTY AGAINST 4641 OLD CANOE CREEK ROAD OPERATIONS LLC**

163. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

164. This claim presents a theory of recovery based upon the presence of a fiduciary duty owed by Defendant 4641 Operations, exclusive of and in addition to all rights encompassed in negligence or Chapter 400, Fla. Stat.

165. At all times material, Ms. Sheller was incapable of independently providing for all of her necessary care and services to attain and maintain the highest practicable physical, mental, and psychosocial well-being.

166. Ms. Sheller placed a special confidence and trust in 4641 Operations to provide for all of her necessary care and services to attain and maintain the highest practicable physical, mental, and psychosocial well-being. Ms. Sheller also relied on 4641 to provide such care and services.

167. 4641 Operations accepted the special confidence and trust placed upon it by Ms. Sheller by admitting her to Plantation Bay and by reserving the right to specifically determine the level of care, protection, supplies, and services that she would receive.

168. Ms. Sheller was solely and particularly dependent upon the employees, officers, directors, and agents of 4641 Operations to provide for her daily care, protection, supplies, services, and personal and intimate needs.

169. 4641 Operations developed a special relationship with Ms. Sheller by virtue of the nature of the care and services provided, the supposedly superior knowledge, skill, and abilities, the enormous disparity of power and unequal bargaining position 4641 enjoyed over Ms. Sheller.

170. This special relationship allowed 4641 to occupy a position of confidence toward Ms. Sheller which required fidelity, loyalty, good faith, and fair dealing by 4641 Operations.

171. 4641 accepted monies intended for the provision of care and services to the residents, including Ms. Sheller, while representing that it would provide the full value of the care and services as required. Instead, 4641 Operations failed to provide the full value of care and services as promised and/or required.

172. Additionally, 4641 Operations had a duty to refrain from engaging in self-dealing.

173. In violation of this duty, 4641 Operations entered into numerous contracts that were for the benefit of the facility, its owners and operators and worked to the detriment of residents like Ms. Sheller. These contracts included but were not limited to: lease and sub-lease agreements; back office agreements; pharmacy goods and services agreements; management agreements; therapy services agreements; nurse staffing agreements; and administrative service agreements.

174. Notwithstanding its fiduciary duties to Ms. Sheller, 4641 Operations acted and failed to act in material breach of the fiduciary duties owed to Ms. Sheller and to the direct detriment of its residents, including Ms. Sheller. Instead, 4641 Operations acted or failed to act in ways to promote its own interests and in ways in contravention of the residents.

175. 4641 Operations' breaches of its fiduciary duties to Ms. Sheller were the legal cause of the loss, injury, and damages suffered by Ms. Sheller.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-



judgment interest, against 4641 Old Canoe Creek Road Operations, LLC, and further demands a trial by jury of all issues so triable.

**COUNT IX: FRAUDULENT TRANSFER AGAINST 4641 OLD CANOE CREEK ROAD OPERATIONS, LLC.**

176. Plaintiff realleges and incorporates Paragraphs 1 through 61, 74 through 79, and 82 through 84 above as if fully set forth herein.

177. The causes of action pled above arose, at the latest, on December 20, 2022, the date of Ms. Sheller's untimely death.

178. As of that date, the Estate of Dorothy Roslyn Sheller (the "Estate") was a future creditor with a claim, as that term is defined under Fla. Stat. § 726.102(4), against 4641 Operations.

179. As of the date of this Complaint, at the latest, the Estate is a creditor with a claim, as those terms are defined under Fla. Stat. § 726.102(4)-(5), against 4641 Operations.

180. 4641 Operations is and was a debtor, as that term is defined under Fla. Stat. § 726.102(7), of the Estate.

181. Upon information and belief, both before and after the Estate's claims arose, 4641 Operations has made transfers and/or incurred debt obligations with the actual intent to hinder, delay, or defraud its creditors, including the Estate.

182. Upon information and belief, both before and after the Estate's claims arose, 4641 Operations has made transfers and/or incurred obligations without receiving a reasonably equivalent value in exchange for the transfer or obligation, and 4641 Operations:

- a. Was engaged or about to engage in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; and/or
- b. Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond its ability to pay as they became due.

183. According to financial statements certified by representatives of 4641 Operations under penalty of perjury, from July 1, 2021 to June 30, 2022, 4641 Operations incurred an additional \$12,553,714.

184. As a result of the fraudulent transfers, 4641 Operations does not and/or will not have sufficient assets available for the satisfaction of the Estate's claims.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against 4641 Old Canoe Creek Road Operations, LLC, awarding Plaintiff any and all relief authorized by Fla. Stat. § 726.108, including avoidance of the fraudulent transfers, attachment against the transferred assets, injunctive relief enjoining further dispositions of assets or incurrence of additional debt, and such other and further relief this Court deems just and proper.

**COUNT X: VICARIOUS LIABILITY OF POWERBACK REHABILITATION, LLC FOR WRONGFUL DEATH UNDER CHAPTER 400**

185. Plaintiff realleges and incorporates Paragraphs 1 through 126 above as if fully set forth herein.

186. Mr. Nozil and Ms. Schafer were direct caregivers of Ms. Sheller against whom a cause of action for negligence and/or violation of residents' rights may be brought under Fla. Stat. § 400.023(1).

187. At all relevant times, Mr. Nozil and Ms. Schafer were employees of PowerBack acting within the course and scope of their employment.



188. Mr. Nozil and Ms. Schafer owed duties to Ms. Sheller as direct caregivers providing care to a resident in a nursing facility, including but not limited to the following:

- a. To provide adequate and appropriate health care and protective services, including therapeutic and rehabilitative services consistent with established and recognized practice standards within the community;
- b. To treat her courteously, fairly, and with the fullest measure of dignity;
- c. To take reasonable measures to prevent against neglect and other violations of her resident's rights under Fla. Stat. § 400.022; and/or
- d. To ensure the provision of therapy services to Ms. Sheller in a manner that maintains the highest practicable physical, mental, and psychological well-being as determined by Ms. Sheller's assessments, individual plan of care, and needs.

189. Mr. Nozil and Ms. Schafer breached their duties to Ms. Sheller in one or more ways, including but not limited to the following:

- a. failing to provide Ms. Sheller with adequate and appropriate therapeutic and rehabilitative services consistent with established and recognized practice standards within the community;
- b. failing to ensure adequate health care and protective services were provided to Ms. Sheller;
- c. failing to treat Ms. Sheller courteously, fairly, and with the fullest measure of dignity;
- d. failing to develop or prepare an adequate care plan for Ms. Sheller;
- e. failing to adequately monitor Ms. Sheller;
- f. failing to protect Ms. Sheller from physical, mental, and psychological harm resulting from the injuries detailed above;
- g. failing to conduct or participate in risk management and quality assurance committee meetings to identify clinical risks and issues related to resident care; and/or
- h. failing to create and/or implement appropriate policies and procedures to ensure protection of resident's rights.

190. These duties are set forth in Fla. Stat. § 400.022 and Fla. Admin Code 59A-4 and are non-delegable.

191. Through the actions and inaction of its employees, PowerBack breached its

duties to Ms. Sheller and violated her statutorily mandated nursing home resident's rights.

192. As a direct and proximate cause of Mr. Nozil, Ms. Schafer, and PowerBack's negligence and/or violations of Ms. Sheller's resident's rights, Ms. Sheller suffered bodily injury and, ultimately, death. Consequently, the Estate of Dorothy Roslyn Sheller and the survivors of the Estate, including Rachael Sheller-Alvarez (daughter) and Leah Sheller Moses (daughter) are entitled to all damages recoverable for the wrongful death caused by the Consulate, including but not limited to:

- a. Damages for Ms. Sheller's bodily injury, pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, medical expenses, from the time of injury until the time of death;
- b. Medical bills and expenses;
- c. Funeral expenses;
- d. Damages suffered by the survivors of Ms. Sheller including mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against PowerBack Rehabilitation, LLC, and further demands a trial by jury of all issues so triable.

**COUNT XI: WRONGFUL DEATH AGAINST POWERBACK REHABILITATION, LLC**

193. Plaintiff realleges and incorporates Paragraphs 1 through 126 above as if fully set forth herein.

194. PowerBack owed duties to Ms. Sheller as a resident at Plantation Bay who would foreseeably be placed at risk of harm due to PowerBack's negligence in performing and providing therapy and rehabilitation services to 4641 Operations and the residents of Plantation Bay, including Ms. Sheller.

195. The duties owed to Ms. Sheller included, but are not limited to:
- a. Create, implement, and execute adequate policies and procedures to protect against foreseeable harm to Ms. Sheller;
  - b. Train and educate the appropriate professionals and staff members on such policies and procedures;
  - c. Perform adequate screenings to assess potential safety concerns associated with Ms. Sheller's condition;
  - d. Address urgent safety concerns by implementing precautionary measures and/or communicating such concerns to the appropriate members of Ms. Sheller's interdisciplinary health care team;
  - e. Participate in the creation of an adequate care plan for Ms. Sheller;
  - f. Ensure the implementation of appropriate falls prevention measures and plans for Ms. Sheller; and/or
  - g. Assist in the evaluation, planning, and direction of care of Ms. Sheller.

196. PowerBack breached their duties to Ms. Sheller in one or more ways, including but not limited to the following:

- a. Failing to create, implement, and execute adequate policies and procedures to protect against foreseeable harm to Ms. Sheller;
- b. Failing to train and educate the appropriate professionals and staff members on such policies and procedures;
- c. Failing to perform adequate screenings to assess potential safety concerns associated with Ms. Sheller's condition;
- d. Failing to address urgent safety concerns by implementing precautionary measures and/or communicating such concerns to the appropriate members of Ms. Sheller's interdisciplinary health care team;
- e. Failing to participate in the creation of an adequate care plan for Ms. Sheller;
- f. Failing to ensure the implementation of appropriate falls prevention measures and plans for Ms. Sheller;
- g. Failing to adequately evaluate, plan, and direct the care of Ms. Sheller; and/or
- h. Placing Ms. Sheller at foreseeable risk of harm due to PowerBack's negligence.

197. As a direct and proximate cause of PowerBack's negligence, Ms. Sheller suffered bodily injury and, ultimately, death. Consequently, the Estate of Dorothy Roslyn



Sheller and the survivors of the Estate, including Rachael Sheller-Alvarez (daughter) and Leah Sheller Moses (daughter) are entitled to all damages recoverable for the wrongful death caused by the PowerBack, including but not limited to:

- a. Damages for Ms. Sheller's bodily injury, pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, medical expenses, from the time of injury until the time of death;
- b. Medical bills and expenses;
- c. Funeral expenses;
- d. Damages suffered by the survivors of Ms. Sheller including mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against PowerBack Rehabilitation, LLC, and further demands a trial by jury of all issues so triable.

**COUNT XII: VICARIOUS LIABILITY OF POWERBACK REHABILITATION, LLC FOR WRONGFUL DEATH**

198. Plaintiff realleges and incorporates Paragraphs 1 through 126 above as if fully set forth herein.

199. In providing occupational therapy care to Ms. Sheller, Mr. Nozil and Ms. Schafer owed a duty to exercise reasonable care and refrain from performing these services in a manner that would place Ms. Sheller at foreseeable risk of harm.

200. Mr. Nozil and Ms. Schafer owed duties to Ms. Sheller as a resident at Plantation Bay who would foreseeably be placed at risk of harm due to Mr. Nozil and/or Ms. Schafer's negligence in performing and providing therapy services for Ms. Sheller.

201. Mr. Nozil and Ms. Schafer breached their duties to Ms. Sheller by failing to exercise reasonable care in their treatment of Ms. Sheller.



202. At all relevant times, Mr. Nozil and Ms. Schafer were employees of PowerBack acting within the course and scope of their employment.

203. As a direct and proximate cause of this negligence, Ms. Sheller suffered bodily injury and, ultimately, death. Consequently, the Estate of Dorothy Roslyn Sheller and the survivors of the Estate, including Rachael Sheller-Alvarez (daughter) and Leah Sheller Moses (daughter) are entitled to all damages recoverable for the wrongful death caused, including but not limited to:

- a. Damages for Ms. Sheller's bodily injury, pain and suffering, disability, disfigurement, mental anguish, aggravation of pre-existing conditions, loss of the capacity for the enjoyment of life, medical expenses, from the time of injury until the time of death;
- b. Medical bills and expenses;
- c. Funeral expenses;
- d. Damages suffered by the survivors of Ms. Sheller including mental pain and suffering, loss of support and services, loss of parental companionship, instruction, and guidance.

WHEREFORE Plaintiff demands judgment for damages, including costs and pre-judgment interest, against PowerBack Rehabilitation, LLC, and further demands a trial by jury of all issues so triable.

**COUNT XIII: DECLARATORY JUDGMENT OF SUCCESSOR LIABILITY OF 541 OLD CANOE CREEK RD OPCO, LLC. FOR COUNTS I, II, and VIII AGAINST PREDECESSOR 4641 OLD CANOE CREEK ROAD OPERATIONS, LLC.**

204. Plaintiff realleges and incorporates Paragraphs 1 through 126 above as if fully set forth herein.

205. This is an action for declaratory relief pursuant to Fla. Stat. § 86.011 et seq.

206. Plaintiff seeks a declaratory judgment that:

- a. 541 Opco is a mere continuation of 4641 Operations;
- b. That 541 Opco's continuation and absorption of 4641 Operations'

business constituted a *de facto* merger;

- c. That the transfer of assets from 4641 Operations to 541 Opco, as described in Paragraphs 94 through 126, was a fraudulent effort to avoid the liabilities of 4641 Operations; and/or
- d. That 541 Opco is liable for the debt and liabilities of 4641 Operations, including Plaintiff's Counts I, II, and VIII, as the successor-in-interest.

207. The declaration sought herein deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts and is not sought merely as an advisory opinion or propounded from curiosity.

208. There exists a real, actual and justiciable controversy between the parties that warrants the seeking of a declaratory judgment. As a result of the efforts of 561 Opco and 4641 Operations to fraudulently avoid liability, Plaintiff is left only with a debt-ridden shell to satisfy Plaintiff's claims against 4641 Operations. This was by design.

209. The issuance of the declaratory relief requested will settle the controversy between the parties and will serve a useful purpose in clarifying the liability of 541 Opco for the claims raised herein against its predecessor, 4641 Operations.

210. There is a *bona fide*, actual, present practical need for a declaration of the rights and duties of Plaintiff and 541 Opco with respect to 541 Opco's successor liability.

211. The facts surrounding 541 Opco's successor liability are readily ascertainable and can readily be established. The parties require timely adjudication of this controversy as the status of current business, financial, and legal affairs continue to create an unacceptable situation for the parties.

212. The rights of the parties are dependent upon the adjudication of this controversy.

213. Equitable considerations, including the relative burdens on the parties to

this proceeding, dictate that declaratory relief is appropriate.

214. The controversy that is the subject of this claim is ripe, as the parties are unsure of their relative rights and remedies and require this Court's declaratory relief to proceed.

WHEREFORE, Plaintiff respectfully requests that this Court enter a declaratory judgment in Plaintiff's favor declaring 541 Old Canoe Creek Rd Opco, LLC. to be liable for Plaintiff's Counts I, II, and VIII as successor of 4641 Old Canoe Creek Road Operations, LLC, and granting all such other and further relief this Court deems just and proper.

**COUNT XIV: AIDING AND ABETTING FRAUD AGAINST 541 OLD CANOE CREEK RD OPCO, LLC.**

215. Plaintiff realleges and incorporates Paragraphs 1 through 126 above as if fully set forth herein.

216. Defendant 4641 Operations has committed fraud against Plaintiff in the form of a fraudulent transfer transaction with 541 Opco.

217. 541 Opco was and is aware of the nature, circumstances, and effect of this fraud.

218. At the time of the fraudulent transaction, 541 Opco was aware of Plaintiff's claims against 4641 Operations.

219. 541 Opco knowingly and/or intentionally provided substantial assistance to 4641 Operations to advance the commission of this fraud against Plaintiff.

220. As a consequence of 541 Opco's assistance in this fraud, Plaintiff has suffered damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment

awarding Plaintiff all compensable and appropriate damages, including costs and pre-judgment interest, against 541 Old Canoe Creek Rd Opco, LLC, and further demands a trial by jury of all issues so triable.

Dated: December 20, 2024.

Respectfully submitted,

By: /s/ Max A. Eichenblatt  
Alaina Fotiu-Wojtowicz, Esq.  
Florida Bar No. 0084179  
Max A. Eichenblatt, Esq.  
Florida Bar No. 1025141  
BRODSKY FOTIU-WOJTOWICZ, PLLC  
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# **EXHIBIT 1**

IN THE CIRCUIT COURT IN AND FOR OSCEOLA COUNTY, FLORIDA  
PROBATE DIVISION

IN RE: ESTATE OF  
DOROTHY ROSLYN SHELLER,

CASE NUMBER: 2023 CP 00162 PR

JUDICIAL SECTION:

Deceased.

\_\_\_\_\_ /

LETTERS OF ADMINISTRATION  
(Single Personal Representative)

TO ALL WHOM IT MAY CONCERN

WHEREAS, DOROTHY ROSLYN SHELLER, a resident of OSCEOLA COUNTY, FLORIDA, died on DECEMBER 20, 2022, owning assets in the State of Florida, and

WHEREAS, RACHAEL EDEN SHELLER-ALVAREZ has been appointed personal representative of the estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned circuit judge, declare RACHAEL EDEN SHELLER-ALVAREZ duly qualified under the laws of the State of Florida to act as personal representative of the ESTATE OF DOROTHY ROSLYN SHELLER, DECEASED, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

ORDERED on this \_\_\_\_\_



Signed by ALVARO, CHAD in 2023 CP 000162 PR  
on 05/01/2023 12:44:31 RE67yFur

\_\_\_\_\_  
CIRCUIT COURT JUDGE