

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.: 2377CV00064-C

DIANA W. COLEMAN, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
VIOLA THAYER WHITTEMORE,)
Plaintiff,)

v.)

GENESIS HEALTHCARE, LLC,)
APPLE VALLEY CENTER, and)
ACADEMY MANOR,)

Defendants.)

COMPLAINT AND DEMAND FOR JURY TRIAL

PARTIES

1. Diana W. Coleman is the duly appointed Personal Representative (hereafter "Personal Representative") of the Estate of Viola Thayer Whittemore (hereafter "Plaintiff's Decedent", "Resident" or "Decedent"). Personal Representative was appointed by the Middlesex County Probate Court on May 16, 2022, Docket No.: M122P2419EA. Personal Representative is the daughter of Plaintiff's Decedent and resides at 24 Apple Drive Townsend, MA 01469.
2. Genesis Healthcare, LLC (hereafter "Defendant Genesis") is a for-profit corporation which owns and/or operates Apple Valley Center and Academy Manor, senior living communities located in Massachusetts. Defendant Genesis' Principal Office is located at 101 E. State Street Kennett Square, PA 19348. Defendant Genesis' Resident Agent is located at 84 State Street Boston, MA 02109.
3. Apple Valley Center (hereafter "Defendant Apply Valley") is a senior living community located at 400 Groton Road Ayer, MA.

4. Academy Manor (hereafter "Defendant Academy Manor") is a senior living community located at 89 Morton Street Andover, MA.

FACTS

5. Plaintiff repeats, realleges, and incorporates by reference all prior paragraphs herein as if again set forth in full.
6. Defendant Genesis is in the business of providing, among other things, personalized care, supervision and assistance to its residents.
7. Defendant Apple Valley is in the business of providing, among other things, personalized care, supervision and assistance to its residents.
8. Defendant Academy Manor is in the business of providing, among other things, personalized care, supervision and assistance to its residents.
9. The defendants are subject to and required to follow the regulations under 105 CMR 150.
10. At all times material to this Complaint, Defendant Genesis owned and/or operated Apple Valley Center and Academy Manor.
11. At all times material to this Complaint, Defendant Apple Valley Center was and is an assisted living residence.
12. At all times material to this Complaint, Defendant Academy Manor was and is an assisted living residence.
13. At all times during the Decedent's residency at the facility known as Apple Valley Center, Defendant Genesis operated same as a nursing home offering skilled and intermediate care.
14. At all times during the Decedent's residency at the facility known as Apple Valley Center, Defendant Apple Valley operated same as a nursing home offering skilled and intermediate care.
15. At all times during the Decedent's residency at the facility known as Academy Manor, Defendant Genesis operated same as a nursing home offering skilled and intermediate care.
16. At all times during the Decedent's residency at the facility known as Academy Manor, Defendant Academy Manor operated same as a nursing home offering skilled and intermediate care.
17. As a condition of licensure, the Defendant Genesis and its managerial employs

and agents had the duty, at all times material to this Complaint, to operate Apple Valley Center and Academy Manor in compliance with the regulations governing licensed nursing homes in Massachusetts in effect during the Decedent's residency.

18. Defendant Genesis as owner and/or manager of Apple Valley Center, was at all relevant times, legally responsible for the actions of its managerial employees and agents, and/or those employees supervised, while acting within the course and scope of their employment and/or agency.
19. Defendant Apple Valley was at all relevant times, legally responsible for the actions of its managerial employees and agents, and/or those employees supervised, while acting within the course and scope of their employment and/or agency.
20. Defendant Academy Manor was at all relevant times, legally responsible for the actions of its managerial employees and agents, and/or those employees supervised, while acting within the course and scope of their employment and/or agency.
21. At all times material to this Complaint, Defendant Genesis and its managerial employees and agents had the duty, and regulations required them, to operate Apple Valley Center in compliance with regulations governing skilled nursing facilities.
22. At all times material to this Complaint, Defendant Genesis and its managerial employees and agents had the duty, and regulations required them, to operate Academy Manor in compliance with regulations governing skilled nursing facilities.
23. At all times material to this Complaint, Defendant Apple Valley and its managerial employees and agents had the duty, and regulations required them, to operate its facility in compliance with regulations governing skilled nursing facilities.
24. At all times material to this Complaint, Defendant Academy Manor and its managerial employees and agents had the duty, and regulations required them, to operate its facility in compliance with regulations governing skilled nursing facilities.
25. Defendants and their managerial employees and agents, owed certain non-delegable fiduciary duties to the Decedent, including administrative duties to exercise reasonable care in:
 - a. Monitoring and overseeing the treatment that was prescribed by nurses, attendants and other health care persons practicing at the facility;

- b. Monitoring and overseeing the qualifications, competency and compliance with its policies and the applicable standards of care of the nurses, attendants and other health care persons practicing at the facility;
 - c. Monitoring and overseeing the selection and retention of all nurses, attendants and other health care persons practicing at the facility;
 - d. Monitoring and overseeing the compliance of all employees and agents with standards the facility Defendants' agents agreed to abide by the law; and
 - e. Adopting and implementing policies, which did not interfere with the best judgment of nurses, doctors, and other health care persons practicing at the facility.
26. Defendants also had non-delegable fiduciary duties to the Decedent, including but not limited to the duties set forth in the ensuing paragraphs of this Complaint.
27. The Defendants were, at all relevant times, legally responsible for the actions of its managerial employees and agents, and/or those employees they supervised, while acting within the course and scope of their employment and/or agency.
28. Plaintiff's Decedent was 96 years old when she passed away on September 17, 2020.
29. Diana W. Coleman is the daughter of Viola Thayer Whittemore.

Incident of August 27, 2020 at Apple Valley Center

30. Plaintiff repeats, realleges, and incorporates by reference all prior paragraphs herein as if again set forth in full.
31. At all material times, Plaintiff's Decedent was a resident of Apple Valley Center and required care, supervision and assistance from Defendant Apple Valley and its agents and employees.
32. Upon Plaintiff's Decedent's admission to Apple Valley Center, she was assessed by medical staff and physicians deemed her as a fall risk.
33. Upon Plaintiff's Decedent's admission to Apple Valley Center she was assessed by the medical staff and physicians deemed her as a high fall risk.
34. Upon Plaintiff's Decedent's admission to Apple Valley Center, physician's orders required that she have a bed and/or chair alarm at all times.

35. On August 27, 2020, Plaintiff's Decedent was 96 years old.
36. On August 27, 2020, Plaintiff's Decedent required supervision.
37. On August 27, 2020, Defendant Apple Valley failed to secure Plaintiff's Decedent to her bed/chair.
38. On or about August 27, 2020, Defendant Apple Valley failed to properly use the bed/chair alarm for Plaintiff's Decedent.
39. On or about August 27, 2020, Defendant Apple Valley failed to use the bed/chair alarm for Plaintiff's Decedent.
40. On or about August 27, 2020, Defendant Apple Valley failed to properly train its employee(s) on the use of the bed/chair alarm for Plaintiff's Decedent.
41. On or about August 27, 2020, Defendant Apple Valley failed to provide assistance to Plaintiff's Decedent when getting out of her chair/bed and/or walking.
42. On or about August 27, 2020, Defendant Apple Valley and/or its employee(s) knew or reasonably should have known that Plaintiff's Decedent was out of her chair/bed yet Defendant Apple Valley and/or its employee(s) failed to take action to assist Plaintiff's Decedent.
43. On or about August 27, 2020, Defendant Apple Valley and/or its employee(s) shut off Plaintiff's Decedent's chair/bed alarm.
44. On or about August 27, 2020, Defendant Apple Valley failed to follow physician's orders regarding the prescribed care and treatment of Plaintiff's Decedent.
45. On or about August 27, 2020, Defendant Apple Valley and its staff left Plaintiff's Decedent unattended and unsupervised, causing her to fall from her bed to the floor, resulting in serious bodily injuries.
46. On or about August 27, 2020, Defendant Apple Valley was negligent for leaving Plaintiff's Decedent unattended, unsupervised, causing her to fall from her bed to the floor, resulting in bodily injuries.
47. On or about August 27, 2020, Defendant Apple Valley was grossly negligent for leaving Plaintiff's Decedent unattended, unsupervised, causing her to fall from her bed to the floor, resulting in bodily injuries.

48. On or about August 27, 2020, Defendant Apple Valley was negligent by failing to properly train its employees to supervise their residents including Plaintiff's Decedent.
49. On or about August 27, 2020, Defendant Apple Valley was grossly negligent by failing to properly train its employees to supervise their residents including Plaintiff's Decedent.
50. As a result of the Defendant's Apple Valley's negligence, Plaintiff's Decedent suffered bodily injuries and conscious pain and suffering.
51. On June 28, 2022, on behalf of the Plaintiff's Decedent a notice of communication pursuant to and in compliance with M.G.L. c. 231§60L detailing the claims of negligence against Defendant Apple Valley, was mailed to Rodica Anghel- Administrator, 400 Groton Road Ayer, MA 01432.
52. Defendant Apple Valley received said correspondence on July 2, 2022.
53. On or about August 2, 2022, Defendant Apple Valley, through counsel acknowledged receipt of said correspondence.
54. On or about November 1, 2022, Defendant Apple Valley, through its counsel, responded in writing to Plaintiff's June 28, 2022 letter.
55. Defendant Apple Valley and Defendant Genesis are jointly and severally liable for Plaintiffs' injuries and damages related to the August 27, 2020 incident.

Incident of September 17, 2020 at Academy Manor

56. At all material times, Plaintiff's Decedent was a resident of Academy Manor and required care, supervision and assistance from Defendant Academy Manor and its agents and employees.
57. Upon Plaintiff's Decedent's admission to Academy Manor, she was assessed by medical staff and physicians deemed her as a fall risk.
58. Upon Plaintiff's Decedent's admission to Academy Manor, she was assessed by the medical staff and physicians deemed her as a high fall risk.
59. Upon Plaintiff's Decedent's admission to Academy Manor, physician's orders required that she have a bed and/or chair alarm at all times.
60. On or about September 17, 2020, Plaintiff's Decedent was 96 years old.
61. On or about September 17, 2020, Plaintiff's Decedent required supervision.

62. On or about September 17, 2020 Defendant Academy Manor failed to supervise Plaintiff's Decedent.
63. On or about September 17, 2020, Defendant Academy Manor failed to properly train its employee(s) on supervising Plaintiff's Decedent.
64. On or about September 17, 2020, Defendant Academy Manor failed to provide assistance to Plaintiff's Decedent when getting out of her chair/bed and/or walking.
65. On or about September 17, 2020, Defendant Academy Manor and/or its employee(s) knew or reasonably should have known that Plaintiff's Decedent was out of her chair/bed yet Defendant and/or its employee(s) failed to take action to assist Plaintiff's Decedent.
66. On or about September 17, 2020, Defendant Academy Manor and/or its employee(s) shut off Plaintiff's Decedent's chair/bed alarm.
67. On or about September 17, 2020, Defendant Academy Manor failed to follow physician's orders regarding the prescribed care and treatment of Plaintiff's Decedent.
68. On or about September 17, 2020, Defendant Academy Manor and its staff left Plaintiff's Decedent unattended and unsupervised, causing her to fall, resulting in serious bodily injuries.
69. On or about September 17, 2020, Defendant Academy Manor and its staff left Plaintiff's Decedent unattended and unsupervised, causing her to fall, resulting in blunt impact injuries to her torso.
70. On or about September 17, 2020, Defendant Academy Manor and its staff left Plaintiff's Decedent unattended and unsupervised, causing her to fall, resulting in death.
71. On or about September 17, 2020, Defendant Academy Manor was grossly negligent for leaving Plaintiff's Decedent unattended, unsupervised, causing her to fall, resulting in bodily injuries.
72. On or about September 17, 2020, Defendant Academy Manor was grossly negligent for leaving Plaintiff's Decedent unattended, unsupervised, causing her to fall, resulting in blunt impact injuries to her torso.
73. On or about September 17, 2020, Defendant Academy Manor was grossly negligent for leaving Plaintiff's Decedent unattended, unsupervised, causing her to fall, resulting in death.

74. On or about September 17, 2020, Defendant Academy Manor was negligent by failing to properly train its employees to supervise their residents including Plaintiff's Decedent.
75. On or about September 17, 2020, Defendant Academy Manor was grossly negligent by failing to properly train its employees to supervise their residents including Plaintiff's Decedent.
76. As a result of the Defendant Academy Manor's negligence, Plaintiff's Decedent suffered bodily injuries and conscious pain and suffering and ultimately the loss of her life on September 17, 2020.
77. As a result of Defendant Academy Manor's gross negligence, Plaintiff's Decedent suffered bodily injuries and conscious pain and suffering and ultimately the loss of her life on September 17, 2020.
78. Plaintiff's Decedent's death certificate lists "recent blunt impact injuries of torso" as a significant condition contributing to death.
79. On June 28, 2022, on behalf of the Plaintiff's Decedent a notice of communication pursuant to and in compliance with M.G.L. c. 231§60L detailing the claims of negligence against Defendant Academy Manor, was mailed to Susan Gauthier, Administrator, of 89 Morton Street Andover, MA
80. Defendant Academy Manor received said correspondence on July 2, 2022.
81. Defendant Academy Manor and Defendant Genesis are jointly and severally liable for Plaintiff Decedent's injuries and any and all damages related to the September 17, 2020 incident.

COUNT I- NEGLIGENCE

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Apple Valley Center
(Incident of August 27, 2020)

82. Plaintiff repeats, realleges and incorporates fully herein by reference all prior paragraphs of this complaint.
83. On or about August 27, 2020, Defendant Apple Valley owned and was in control of the Apple Valley Center facility located at 400 Groton Road Ayer, MA.
84. On or about August 27, 2020, Plaintiff's Decedent was a resident of the facility.
85. On or about August 27, 2020, Plaintiff's Decedent was under the care of Defendant Apple Valley.

86. On or about August 27, 2020, Defendant Apple Valley was responsible for the training and supervision of its employees.
87. On or about August 27, 2020, Defendant Apple Valley failed to properly train and/or supervise its employees.
88. On or about August 27, 2020, Defendant Apple Valley had a duty to oversee and supervise Plaintiff's Decedent.
89. On or about August 27, 2020, Defendant Apple Valley had a duty to attend and provide care to Plaintiff's Decedent.
90. On or about August 27, 2020, Defendant Apple Valley had a duty to prevent Plaintiff's Decedent from falling.
91. On or about August 27, 2020, Defendant Apple Valley left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to fall to the floor resulting in bodily injuries.
92. Defendant Apple Valley breached the duty it owed to Plaintiff's Decedent.
93. As a result of Defendant Apple Valley's negligence including the negligence of its employees, Plaintiff's Decedent suffered bodily injuries and pain and suffering.
94. As a direct and proximate result of Defendant Apple Valley's negligence, Plaintiff's Estate is entitled to damages.

WHEREFORE, Plaintiff, Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer Whittemore demands judgment on Count I of this Complaint for damages in an amount to be determined at trial, plus interest and costs, including reasonable attorney's fees and such other and further relief as this Court deems just.

COUNT II- GROSS NEGLIGENCE

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Apple Valley Center
(Incident of August 27, 2020)

95. Plaintiff repeats, realleges and incorporates fully herein by reference all prior paragraphs of this complaint.
96. On or about August 27, 2020, Plaintiff's Decedent was under the care of Defendant Apple Valley.
97. On or about August 27, 2020, Defendant Apple Valley was responsible for the training and supervision of its employees.

98. On or about August 27, 2020, Defendant Apple Valley failed to properly train and/or supervise its employees.
99. On or about August 27, 2020, Defendant Apple Valley had a duty to oversee and supervise Plaintiff's Decedent.
100. On or about August 27, 2020, Defendant Apple Valley had a duty to attend and provide care to Plaintiff's Decedent.
101. On or about August 27, 2020, Defendant Apple Valley had a duty to prevent Plaintiff's Decedent from falling.
102. On or about August 27, 2020, Defendant Apple Valley left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to fall to the floor resulting in bodily injuries.
103. Defendant Apple Valley breached the duty it owed to Plaintiff's Decedent.
104. Defendant Apple Valley's conduct surpassed mere negligence and rose to the level of gross negligence.
105. As a direct and proximate result of Defendant Apple Valley's gross negligence, Plaintiff's Estate is entitled to damages.

WHEREFORE, Plaintiff, Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer Whittemore demands judgment on Count II of this Complaint for damages in an amount to be determined at trial, plus interest and costs, including reasonable attorney's fees and such other and further relief as this Court deems just.

COUNT III- NEGLIGENCE

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Academy Manor
(Incident of September 17, 2020)

106. Plaintiff repeats, realleges and incorporates fully herein by reference all prior paragraphs of this complaint.
107. On or about September 17, 2020, Defendant Academy Manor owned and was in control of the Academy Manor facility located at 89 Morton Street Andover, MA.
108. On or about September 17, 2020, Plaintiff's Decedent was a resident of the facility.
109. On or about September 17, 2020, Plaintiff's Decedent was under the care of Defendant Academy Manor.

110. On or about September 17, 2020 Defendant Academy Manor was responsible for the training and supervision of its employees.
111. On or about September 17, 2020, Defendant Academy Manor failed to properly train and/or supervise its employees.
112. On or about September 17, 2020, Defendant Academy Manor had a duty to oversee and supervise Plaintiff's Decedent.
113. On or about September 17, 2020, Defendant Academy Manor had a duty to attend and provide care to Plaintiff's Decedent.
114. On or about September 17, 2020, Defendant Academy Manor had a duty to prevent Plaintiff's Decedent from falling.
115. On or about September 17, 2020, Defendant Academy Manor left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to fall to the floor resulting in bodily injuries.
116. On or about September 17, 2020, Defendant Academy Manor left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to suffer blunt impact injuries of torso.
117. On or about September 17, 2020, Defendant Academy Manor left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent's death.
118. Defendant Academy Manor breached the duty it owed to Plaintiff's Decedent.
119. As a result of Defendant Academy Manor's negligence including the negligence of its employees, Plaintiff's Decedent suffered bodily injuries and pain and suffering.
120. As a direct and proximate result of Defendant Academy Manor's negligence, Plaintiff's Estate is entitled to damages.

WHEREFORE, Plaintiff, Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer Whittemore demands judgment on Count III of this Complaint for damages in an amount to be determined at trial, plus interest and costs, including reasonable attorney's fees and such other and further relief as this Court deems just.

COUNT IV- GROSS NEGLIGENCE

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Academy Manor
(Incident of September 17, 2020)

121. Plaintiff repeats, realleges and incorporates fully herein by reference all prior paragraphs of this complaint.

122. On or about September 17, 2020, Plaintiff's Decedent was under the care of Defendant Academy Manor.
123. On or about September 17, 2020, Defendant Academy Manor was responsible for the training and supervision of its employees.
124. On or about September 17, 2020, Defendant Academy Manor failed to properly train and/or supervise its employees.
125. On or about September 17, 2020, Defendant Academy Manor had a duty to oversee and supervise Plaintiff's Decedent.
126. On or about September 17, 2020, Defendant Academy Manor had a duty to attend and provide care to Plaintiff's Decedent.
127. On or about September 17, 2020, Defendant Academy Manor had a duty to prevent Plaintiff's Decedent from falling.
128. On or about September 17, 2020, Defendant Academy Manor left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to suffer bodily injuries.
129. On or about September 17, 2020, Defendant Academy Manor left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to suffer blunt impact injuries of torso.
130. On or about September 17, 2020, Defendant Academy Manor left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent's death.
131. Defendant Academy Manor breached the duty it owed to Plaintiff's Decedent.
132. Defendant Academy Manor's conduct surpassed mere negligence and rose to the level of gross negligence.
133. As a direct and proximate result of Defendant Academy Manor's gross negligence, Plaintiff's Estate is entitled to damages.

WHEREFORE, Plaintiff, Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer Whittemore demands judgment on Count IV of this Complaint for damages in an amount to be determined at trial, plus interest and costs, including reasonable attorney's fees and such other and further relief as this Court deems just.

COUNT V- NEGLIGENCE RESULTING IN WRONGFUL DEATH
Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Academy Manor
(Incident of September 17, 2020)

134. Plaintiff realleges and incorporates by reference all prior paragraphs of this complaint as if again set forth herein in full.
135. As a direct and proximate result of the negligence of Defendant Academy Manor, which led to the death of Plaintiff's Decedent; Plaintiff's Decedent endured significant conscious pain and suffering before her expiration and death. The Estate has suffered damages, including, but not limited to, pecuniary and statutory damages, loss of consortium, and is entitled to compensation for punitive damages.

WHEREFORE, per MGL. c. 229, Plaintiff, as Personal Representative of the Estate of Viola Thayer Whittemore demands judgment for damages in an amount to be determined at trial for the above described conscious pain and suffering and wrongful death, plus interest and costs, including but not limited to pecuniary damages and statutory damages, and the services, protection, care, assistance, society, comfort, companionship, guidance, counsel and advice of the decedents to the persons entitled to the damages recovered, as well as compensation for punitive and exemplary damages, reasonable attorney's fees, and such other and further relief as this Court deems just.

COUNT VI- GROSS NEGLIGENCE RESULTING IN WRONGFUL DEATH
Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Academy Manor
(Incident of September 17, 2020)

136. Plaintiff realleges and incorporates by reference all prior paragraphs of this complaint as if again set forth herein in full.
137. Defendant Academy Manor's conduct surpassed mere negligence and rose to the level of gross negligence.
138. As a direct and proximate result of the gross negligence of Defendant Academy Manor which led to the death of Plaintiff's Decedent; Plaintiff's Decedent endured significant conscious pain and suffering before her expiration and death. The Estate suffered damages, including, but not limited to, pecuniary and statutory damages, loss of consortium, and is entitled to compensation for punitive damages.

WHEREFORE, per MGL. c. 229, Plaintiff, as Personal Representative of the Estate of Viola Thayer Whittemore demands judgment for damages in an amount to be determined at trial for the above described conscious pain and suffering and wrongful death, plus interest and costs, including but not limited to pecuniary damages and

statutory damages, and the services, protection, care, assistance, society, comfort, companionship, guidance, counsel and advice of the decedents to the persons entitled to the damages recovered, as well as compensation for punitive and exemplary damages, reasonable attorney's fees, and such other and further relief as this Court deems just.

COUNT VII- CONSCIOUS PAIN AND SUFFERING

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer

Whittemore v. Academy Manor

(Incident of September 17, 2020)

139. Plaintiff realleges and incorporates by reference all prior paragraphs of this complaint as if again set forth herein in full.
140. As a direct and proximate result of the negligence of Defendant Academy Manor, Plaintiff's Decedent suffered great pain of body and mind and anguish of mind and subsequently died.
141. Pursuant to Massachusetts law, Plaintiff's Decedent's estate is entitled to damages for conscious pain and suffering resulting from such serious bodily injuries and loss of consortium.

WHEREFORE, per MGL. c. 229, Plaintiff, as Personal Representative of the Estate of Viola Thayer Whittemore demands judgment for damages in an amount to be determined at trial for the above described conscious pain and suffering and wrongful death, plus interest and costs, including but not limited to pecuniary damages and statutory damages, and the services, protection, care, assistance, society, comfort, companionship, guidance, counsel and advice of the decedents to the persons entitled to the damages recovered, as well as compensation for punitive and exemplary damages, reasonable attorney's fees, and such other and further relief as this Court deems just.

COUNT VIII- NEGLIGENCE

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer

Whittemore v. Genesis Healthcare, LLC.

(Incident of August 27, 2020 at Apple Valley Center)

142. Plaintiff repeats, realleges and incorporates fully herein by reference all prior paragraphs of this complaint.
143. On or about August 27, 2020, Defendant Genesis owned and was in control of the Apple Valley Center facility located at 400 Groton Road Ayer, MA.
144. On or about August 27, 2020, Plaintiff's Decedent was a resident of the facility.
145. On or about August 27, 2020, Plaintiff's Decedent was under the care of Defendant Genesis.

146. On or about August 27, 2020, Defendant Genesis was responsible for the training and supervision of its employees.
147. On or about August 27, 2020, Defendant Genesis failed to properly train and/or supervise its employees.
148. On or about August 27, 2020, Defendant Genesis had a duty to oversee and supervise Plaintiff's Decedent.
149. On or about August 27, 2020, Defendant Genesis had a duty to attend and provide care to Plaintiff's Decedent.
150. On or about August 27, 2020, Defendant Genesis had a duty to prevent Plaintiff's Decedent from falling.
151. On or about August 27, 2020, Defendant Genesis left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to fall to the floor resulting in bodily injuries.
152. Defendant Genesis breached the duty it owed to Plaintiff's Decedent.
153. As a result of Defendant Genesis' negligence including the negligence of its employees, Plaintiff's Decedent suffered bodily injuries and pain and suffering.
154. As a direct and proximate result of Defendant Genesis negligence, Plaintiff's Estate is entitled to damages.

WHEREFORE, Plaintiff, Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer Whittemore demands judgment on Count VIII of this Complaint for damages in an amount to be determined at trial, plus interest and costs, including reasonable attorney's fees and such other and further relief as this Court deems just.

COUNT IX- GROSS NEGLIGENCE

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Genesis Healthcare, LLC.
(Incident of August 27, 2020 at Apple Valley Center)

155. Plaintiff repeats, realleges and incorporates fully herein by reference all prior paragraphs of this complaint.
156. On or about August 27, 2020, Plaintiff's Decedent was under the care of Defendant Genesis.
157. On or about August 27, 2020, Defendant Genesis was responsible for the training and supervision of its employees.

158. On or about August 27, 2020, Defendant Genesis failed to properly train and/or supervise its employees.
159. On or about August 27, 2020, Defendant Genesis had a duty to oversee and supervise Plaintiff's Decedent.
160. On or about August 27, 2020, Defendant Genesis had a duty to attend and provide care to Plaintiff's Decedent.
161. On or about August 27, 2020, Defendant Genesis had a duty to prevent Plaintiff's Decedent from falling.
162. On or about August 27, 2020, Defendant Genesis left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to fall to the floor resulting in bodily injuries.
163. Defendant Genesis breached the duty it owed to Plaintiff's Decedent.
164. Defendant Genesis' conduct surpassed mere negligence and rose to the level of gross negligence.
165. As a direct and proximate result of Defendant Genesis' gross negligence, Plaintiff's Estate is entitled to damages.

WHEREFORE, Plaintiff, Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer Whittemore demands judgment on Count IX of this Complaint for damages in an amount to be determined at trial, plus interest and costs, including reasonable attorney's fees and such other and further relief as this Court deems just.

COUNT X- NEGLIGENCE

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Genesis Healthcare LLC.
(Incident of September 17, 2020 at Academy Manor)

166. Plaintiff repeats, realleges and incorporates fully herein by reference all prior paragraphs of this complaint.
167. On or about September 17, 2020, Defendant Genesis owned and was in control of the Academy Manor facility located at 89 Morton Street Andover, MA.
168. On or about September 17, 2020, Plaintiff's Decedent was a resident of the facility.
169. On or about September 17, 2020, Plaintiff's Decedent was under the care of Defendant Genesis.

170. On or about September 17, 2020 Defendant Genesis was responsible for the training and supervision of its employees.
171. On or about September 17, 2020, Defendant Genesis failed to properly train and/or supervise its employees.
172. On or about September 17, 2020, Defendant Genesis had a duty to oversee and supervise Plaintiff's Decedent.
173. On or about September 17, 2020, Defendant Genesis had a duty to attend and provide care to Plaintiff's Decedent.
174. On or about September 17, 2020, Defendant Genesis had a duty to prevent Plaintiff's Decedent from falling.
175. On or about September 17, 2020, Defendant Genesis left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to fall to the floor resulting in bodily injuries.
176. On or about September 17, 2020, Defendant Genesis left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to suffer blunt impact injuries of torso.
177. On or about September 17, 2020, Defendant Genesis left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent's death.
178. Defendant Genesis breached the duty it owed to Plaintiff's Decedent.
179. As a result of Defendant Genesis' negligence including the negligence of its employees, Plaintiff's Decedent suffered bodily injuries and pain and suffering.
180. As a direct and proximate result of Defendant Genesis' negligence, Plaintiff's Estate is entitled to damages.

WHEREFORE, Plaintiff, Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer Whittemore demands judgment on Count X of this Complaint for damages in an amount to be determined at trial, plus interest and costs, including reasonable attorney's fees and such other and further relief as this Court deems just.

COUNT XI- GROSS NEGLIGENCE

Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Genesis Healthcare, LLC.
(Incident of September 17, 2020 at Academy Manor)

181. Plaintiff repeats, realleges and incorporates fully herein by reference all prior paragraphs of this complaint.

182. On or about September 17, 2020, Plaintiff's Decedent was under the care of Defendant Genesis.
183. On or about September 17, 2020, Defendant Genesis was responsible for the training and supervision of its employees.
184. On or about September 17, 2020, Defendant Genesis failed to properly train and/or supervise its employees.
185. On or about September 17, 2020, Defendant Genesis had a duty to oversee and supervise Plaintiff's Decedent.
186. On or about September 17, 2020, Defendant Genesis had a duty to attend and provide care to Plaintiff's Decedent.
187. On or about September 17, 2020, Defendant Genesis had a duty to prevent Plaintiff's Decedent from falling.
188. On or about September 17, 2020, Defendant Genesis left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to suffer bodily injuries.
189. On or about September 17, 2020, Defendant Genesis left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent to suffer blunt impact injuries of torso.
190. On or about September 17, 2020, Defendant Genesis left Plaintiff's Decedent unattended and unsupervised, causing Plaintiff's Decedent's death.
191. Defendant Genesis breached the duty it owed to Plaintiff's Decedent.
192. Defendant Genesis' conduct surpassed mere negligence and rose to the level of gross negligence.
193. As a direct and proximate result of Defendant Genesis' gross negligence, Plaintiff's Estate is entitled to damages.

WHEREFORE, Plaintiff, Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer Whittemore demands judgment on Count XI of this Complaint for damages in an amount to be determined at trial, plus interest and costs, including reasonable attorney's fees and such other and further relief as this Court deems just.

COUNT XII- NEGLIGENCE RESULTING IN WRONGFUL DEATH
Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Genesis Healthcare, LLC.
(Incident of September 17, 2020 at Academy Manor)

194. Plaintiffs reallege and incorporate by reference all prior paragraphs of this complaint as if again set forth herein in full.

195. As a direct and proximate result of the negligence of Defendant Genesis, which led to the death of Plaintiff's Decedent; Plaintiff's Decedent endured significant conscious pain and suffering before her expiration and death. The Estate has suffered damages, including, but not limited to, pecuniary and statutory damages, loss of consortium, and is entitled to compensation for punitive damages.

WHEREFORE, per MGL. c. 229, Plaintiff, as Personal Representative of the Estate of Viola Thayer Whittemore demands judgment for damages in an amount to be determined at trial for the above described conscious pain and suffering and wrongful death, plus interest and costs, including but not limited to pecuniary damages and statutory damages, and the services, protection, care, assistance, society, comfort, companionship, guidance, counsel and advice of the decedents to the persons entitled to the damages recovered, as well as compensation for punitive and exemplary damages, reasonable attorney's fees, and such other and further relief as this Court deems just.

COUNT XIII- GROSS NEGLIGENCE RESULTING IN WRONGFUL DEATH
Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Genesis Healthcare, LLC
(Incident of September 17, 2020 at Academy Manor)

196. Plaintiff realleges and incorporates by reference all prior paragraphs of this complaint as if again set forth herein in full.

197. Defendant Genesis' conduct surpassed mere negligence and rose to the level of gross negligence.

198. As a direct and proximate result of the gross negligence of Defendant Genesis which led to the death of Plaintiff's Decedent; Plaintiff's Decedent endured significant conscious pain and suffering before her expiration and death. The Estate suffered damages, including, but not limited to, pecuniary and statutory damages, loss of consortium, and is entitled to compensation for punitive damages.

WHEREFORE, per MGL. c. 229, Plaintiff, as Personal Representative of the Estate of Viola Thayer Whittemore demands judgment for damages in an amount to be determined at trial for the above described conscious pain and suffering and wrongful death, plus interest and costs, including but not limited to pecuniary damages and statutory damages, and the services, protection, care, assistance, society, comfort, companionship, guidance, counsel and advice of the decedents to the persons entitled to

the damages recovered, as well as compensation for punitive and exemplary damages, reasonable attorney's fees, and such other and further relief as this Court deems just.

COUNT XIV- CONSCIOUS PAIN AND SUFFERING

**Diana W. Coleman as the Personal Representative of the Estate of Viola Thayer
Whittemore v. Genesis Healthcare, LLC**

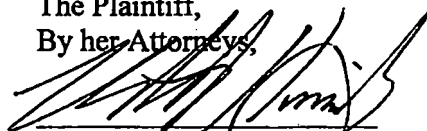
(Incident of September 17, 2020 at Academy Manor)

199. Plaintiff realleges and incorporates by reference all prior paragraphs of this complaint as if again set forth herein in full.
200. As a direct and proximate result of the negligence of Defendant Genesis, Plaintiff's Decedent suffered great pain of body and mind and anguish of mind and subsequently died.
201. Pursuant to Massachusetts law, Plaintiff's Decedent's estate is entitled to damages for conscious pain and suffering resulting from such serious bodily injuries and loss of consortium.

WHEREFORE, per MGL. c. 229, Plaintiff, as Personal Representative of the Estate of Viola Thayer Whittemore demands judgment for damages in an amount to be determined at trial for the above described conscious pain and suffering and wrongful death, plus interest and costs, including but not limited to pecuniary damages and statutory damages, and the services, protection, care, assistance, society, comfort, companionship, guidance, counsel and advice of the decedents to the persons entitled to the damages recovered, as well as compensation for punitive and exemplary damages, reasonable attorney's fees, and such other and further relief as this Court deems just.

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL COUNTS

Respectfully Submitted,
The Plaintiff,
By her Attorneys,



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Dated: January 19, 2023