

Mar 29 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF PICKENS)	C.A. No.: 2021-CP-39-_____
)	
Deonda Weldon, Individually and as)	
Personal Representative of the Estate)	
of Earline Cooley,)	
)	
Plaintiff,)	COMPLAINT
)	(Jury Trial Demanded)
v.)	(Survival Action)
)	
Dominion Clemson, LLC d/b/a)	
Dominion Senior Living at Patrick)	
Square, , Dominion Senior Living,)	
LLC, Dominion Management Group,)	
LLC, Dominion Group, LLC, and)	
Dominion Clemson, II, LLC,)	
)	
Defendant(s).)	



The Plaintiff would show this Honorable Court the following:

1. The Affidavit of Expert Witness is attached hereto as Exhibit A.
2. At all times relevant herein, Deonda Weldon is and was the daughter of Earline Cooley and is the duly appointed Personal Representative of the Estate of Earline Cooley, who at the time of her death was a resident of Pickens County, South Carolina. The Estate is administered through the Probate Court of Pickens County, South Carolina.
3. That Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square (hereinafter "Dominion Clemson") is a business organized and existing under the laws of a state other than the State of South Carolina. This Defendant owns and/or leases property, advertises, maintains agents, servants, employees, and transacts business, deriving substantial revenue therefrom, in Pickens County, South Carolina. Dominion Clemson is an assisted living facility licensed by the State of South Carolina

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and employs or contracts with related staff to provide assisted living services to patients/residents and represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing such services for persons such as Earline Cooley. At all times relevant herein, agents, employees, servants, and apparent agents of Dominion Clemson acted on behalf of themselves and on behalf of Dominion Clemson. Furthermore, at all times relevant herein, Dominion Clemson acted on behalf of itself and on behalf of Defendants Dominion Clemson, II, LLC, Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

4. Upon information and belief, Defendant Dominion Senior Living, LLC (hereinafter “Dominion Senior Living”) is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Senior Living participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Senior Living maintained agents, servants, and employees in Pickens County, South Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion Senior Living is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted

living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Senior Living acted on behalf of themselves and on behalf of Dominion Senior Living. Dominion Senior Living acted on behalf of itself and Dominion Clemson, Dominion Management Group, LLC, Dominion Group, LLC, and Dominion Clemson, II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Senior Living. At all times relevant herein, Defendant Dominion Senior Living used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

5. Upon information and belief, Defendant Dominion Management Group, LLC (hereinafter “Dominion Management”) is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Management participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Management maintained agents, servants, and employees in Pickens County, South Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion

Management is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Senior Living acted on behalf of themselves and on behalf of Dominion Management. Dominion Management acted on behalf of itself and Dominion Clemson, Dominion Senior Living, Dominion Group, LLC, and Dominion Clemson, II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Management. At all times relevant herein, Defendant Dominion Management used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

6. Upon information and belief, Defendant Dominion Group, LLC (hereinafter “Dominion Group”) is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Group participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Group maintained agents, servants, and employees in Pickens County, South

Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion Group is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees of Dominion Group acted on behalf of themselves and on behalf of Dominion Group. Dominion Group acted on behalf of itself and Dominion Clemson, Dominion Senior Living, Dominion Management, and Dominion Clemson II, LLC. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Group. At all times relevant herein, Defendant Dominion Group used its corporate position to direct and affect the funding, staffing, and resident care at the facility in such a way that it maximized profits over resident care. That further, this Defendant was aware of the conditions at Dominion Clemson and failed to adequately take action to prevent injuries such as those described herein to the Plaintiff. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

7. Defendant Dominion Clemson II, LLC (hereinafter “Dominion Clemson II”) is a business incorporated in the State of South Carolina. That this Defendant has controlled and managed Dominion Clemson through management agreements, leasing agreements, purchase agreements, subleasing agreements, financing arrangements, and in other ways. That this Defendant works in conjunction with Defendant Dominion Clemson and the Co-Defendants in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees

of Dominion Clemson, II acted on behalf of themselves and on behalf of Dominion Clemson, II. Dominion Clemson, II acted on behalf of itself and Dominion Clemson. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Clemson, II. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

8. Earline Cooley was admitted to the Defendants' facility on or about March 8, 2019 for assisted living facility services and care

9. That at the time of admission, Earline Cooley had a number of diagnoses including, but not limited to, diabetes, neuropathy, hypertension, dementia, anxiety, hyperlipidemia, and depression.

10. That at or around the time of Earline Cooley's admission, Defendants knew or should have known that Earline Cooley was a high risk for falls.

11. The physician's evaluation form at the time of Earline Cooley's admission reflected that Earline Cooley did not have the ability to enter and exit the facility unassisted. The fall prevention program resident risk assessment form dated March 8, 2019 reflected that Earline Cooley had a history of prior falls and had fallen within the past three months. Furthermore, it was noted that she had a history of incontinence which increased her fall risk.

12. The only individual care plan created by the Defendants was dated November 18, 2019, some eight (8) months after her admission to the facility.

13. This care plan from November 2019 reflected for purposes of ambulation/transfer that Earline Cooley uses a walker/cane but did not reflect any additional assistance that she may need in ambulation/transfer.

14. That further, the notes of observation of June 27, 2019 noted that Earline Cooley complained of leg pain.

15. The observation notes of August 31, 2019 reflect that Earline Cooley was observed on the floor in an apartment next to the bed as a result of falling out of her bed onto the floor. It was noted that she had bruising to her upper right buttock as a result of her fall.

16. The notes of observation of October 1, 2019 reflect that Earline Cooley was observed on the floor as the result of a fall when her walker rolled out from under her.

17. On October 2, 2019, the notes reflect that Earline Cooley was complaining of pain all over.

18. On October 16, 2019, the notes of observation state that Earline Cooley was found on the floor in the bathroom as the result of a fall when she lost her balance.

19. On October 21, 2019, the notes of observation reflect that the staff found Earline Cooley on the floor due to a fall after she has pressed her pendant due to the fact that she had lost her balance.

20. The notes of October 30, 2019 state that Earline Cooley had several falls during that month.

21. Physical therapy and occupational therapy orders were given by the medical provider for evaluation and potential therapy to address Earline Cooley's fall risk.

22. On November 15, 2019, the observation notes reflect that Earline Cooley was complaining of pain in her legs. That further, on November 16, 2019, Earline Cooley was complaining of weakness and fatigue.

23. The physical therapy notes of November 20, 2019 reflect that Earline Cooley required “moderate physical assistance” to transfer from sit to stand. That further, the physical therapy notes of this date reflect that Earline Cooley was reporting dizziness upon standing. The physical therapist further noted that Earline Cooley had a slow cadence when walking with a walker and that she needed physical assist for improved walker safety, increased upright positioning, and balance control. The notes further reflect that Earline Cooley needed to be redirected to complete her activities throughout the session. Furthermore, the therapist reflects a diagnosis of “unsteadiness on feet”, “weakness”, “history of falling”, as well as other diagnoses.

24. Despite the physical therapist’s findings as well as the many falls which Earline Cooley had already experienced at Defendants’ facility, no changes were made to her care plan or level of assistance provided with transfers and ambulation.

25. The notes of observation for November 25, 2019 reflect that Earline Cooley fell again while walking to her room from supper as a result of losing her balance and injured her left knee.

26. On December 14, 2019, Earline Cooley fell again and was found in the floor in her room by staff.

27. On December 12, 2019, the chart reflects a staff member found Earline Cooley on the floor as a result of a fall.

28. On December 30, 2019, the chart reflects that a staff member found Earline Cooley on the floor in her room as a result of another fall.

29. On January 14, 2020, staff noted that Earline Cooley was requiring more assistance with getting dressed and walking to the dining room.

30. On February 7, 2020, Earline Cooley had another fall at approximately 4:00 a.m. when she lost her balance and injured her right arm.

31. The notes of observation on February 10, 2020 reflect that Earline Cooley seemed weak. However, despite all of the falls and fall risks, no changes were made to Earline Cooley's care plan.

32. On March 9, 2020, Earline Cooley was found in the hallway by staff when she was walking back to her room and tripped and fell. The chart reflects that she hit her head on the floor and that she was complaining of pain in her right hip.

33. As a result of the fall and injuries to Earline Cooley, she was transported by EMS to the emergency room. At the emergency room, it was noted that Earline Cooley "got tripped while walking with walker and 'walker got away'". She was diagnosed with a fracture of the right femoral head/proximal right femoral neck and a urinary tract infection. The records further reflect that the right leg was shorter and externally rotated as a result of the fracture. Further, as a result of the injuries, she suffered with hypoxia and thrombocytopenia after undergoing surgery to repair her fractured hip.

34. The hospital records further reflect that she had multiple falls at the Defendants' facility and that she needed assistance with walking with her walker as

sometimes the walker “moved quicker for her needing also assistance for ambulation with her walker.”

35. Furthermore, as a result of the surgery and her injuries, Earline Cooley’s dementia was accelerated and significantly deteriorated. She continued to deteriorate from her injuries until she died as a direct and proximate result of her injuries on

36. That the Defendants were aware of the failures to provide adequate care as described above and below and were aware of residents such as Earline Cooley and knew that the failures existed at the facility resulting from the decisions made by the Defendants to purposely understaff and underfund the facility in a way that would maximize corporate profits for the Defendants rather than provide adequate and proper care to the residents such as Earline Cooley. That these duties by the Defendants to the residents such as Earline Cooley were non-delegable duties. Furthermore, the acts, omissions, and decisions of the Defendants directly affected resident care such as that of Earline Cooley, and directly caused her injuries. The acts of the Defendants were negligent, willful, wonton, grossly inadequate, and in a reckless disregard for the safety and wellbeing of patients such as Earline Cooley. That further, the Defendants acted as each other’s agent or apparent agents, alter ego, in a joint enterprise, and with an amalgamation of interest. Further, they are directly liable for their corporate and clinical negligence, all of which combined and contributed to cause Earline Cooley’s injuries.

37. As a direct and proximate result of the Defendants’ acts and/or omissions, Earline Cooley suffered the following injuries and damages:

- a. Injuries about her body;
- b. Femur and hip fracture;

- c. Urinary tract infection;
- d. Hypoxia and low oxygen;
- e. Loss of mobility and range of motion;
- f. Thrombocytopenia;
- g. Head injury;
- h. Skin tears and hematomas;
- i. Loss of dignity and respect;
- j. Worsening dementia and mental status;
- k. Humiliation, fear, anxiety, and emotional and psychological distress;
- l. Pain and suffering;
- m. Loss of enjoyment of life;
- n. Suffering;
- o. Has incurred medical expenses and underwent hospitalization, surgery, and medical treatment which she would not have otherwise had to undergo; and
- o. In such other and further ways as discovery and trial shall prove

38. The Plaintiff will show that this action is brought pursuant to the Statutory Provisions for the Survival Actions, pursuant to South Carolina Code of Laws and pursuant to the Common Laws of the State of South Carolina. Further, this action is brought on behalf of heirs of the Estate of the deceased, Earline Cooley, pursuant to the Laws of the State. The heirs include, but are not limited to, Deonda Weldon, Phyllis Elliott, and Debra Galloway.

FIRST CAUSE OF ACTION
(Negligence as to All Defendants)

39. Plaintiff restates and re-alleges each paragraph previously pleaded as if repeated verbatim.

40. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton in the following particulars:

- a. In failing to provide adequate staffing, adequate pay for staff and adequate training for staff at their facility to care for residents/patients such as Earline Cooley with the full knowledge that such inadequate staffing practices would place residents such as Earline Cooley at risk;
- b. In negligently hiring, retaining, and supervising staff at Defendants' facility;
- c. In failing to provide proper, comprehensive, and timely assessments, reassessments, and evaluations outlining all risk factors for Earline Cooley and in failing to properly design, adhere to or modify an appropriate plan of care;
- d. In failing to timely and appropriately implement interventions in a resident with obvious risk of falls and history of falls;
- e. In recognizing, but then failing to appropriately and timely implement proper preventative measures to counteract Earline Cooley's risk for falls;
- f. In failing to advise Earline Cooley and her family that the Defendants could not adequately meet Earline Cooley's needs or provide the level of care and assistance she required;
- g. In failing to transfer Earline Cooley to a facility with higher level of care;

- h. In failing to adequately assist Earline Cooley with transfers, ambulation, and toileting, and in allowing her to fall and break her right femur;
- i. In failing to properly monitor Earline Cooley;
- j. In failing to provide the adequate level of assistance to Earline Cooley to meet her needs;
- k. In failing to take timely and appropriate measures to prevent urinary tract infections;
- l. In failing to timely recognize and treat urinary tract infections once they occurred;
- m. In failing to adequately hydrate and prevent dehydration;
- n. In admitting and retaining Earline Cooley at the facility when she was not qualified for the facility and when the facility could/would not meet her needs;
- o. In failing to have and/or follow appropriate policies, procedures, and guidelines regarding the care and health of residents such as Earline Cooley;
- p. In failing to properly have and follow proper policies, procedures, and guidelines regarding funding, staffing, and operation of Defendants' facility;
- q. In failing to provide and implement proper care plans that would adequately meet Earline Cooley's needs, including her risk for falls, dehydration, urinary tract infections, and other risks which Earline Cooley encountered while a resident at the Defendants' facility;

- r. In failing to timely and properly correct and repair prior failures at the facility, all of which continued and contributed to Earline Cooley's injuries;
- s. In failing to provide services, activities, and care to attain or maintain the highest practical physical, mental, and psychosocial wellbeing of Earline Cooley and in accordance with a written plan of care;
- t. In failing to timely consult with a physician;
- u. In failing to properly follow the care plans;
- v. In failing to properly fund, staff, operate, and manage the facility to the extent that resident care was affected and caused injuries to Earline Cooley;
- w. In negligently administering and operating the Defendants' assisted living facility;
- x. In failing to hire, fire, supervise, and train the employees, agents, staff, and other caregivers at Defendants' facility which were involved in with Earline Cooley's care and treatment;
- y. In failing to comply with the applicable federal and state statutes and regulations designed to protect persons such as Earline Cooley;
- z. In failing to act and provide care as a reasonably prudent assisted living facility would do under the same or similar circumstances;
- aa. In failing to operate, fund, staff, and manage an assisted living facility as reasonable prudent operating, management, holding and real estate companies would do under the same or similar circumstances;

bb. In causing Dominion Clemson to be divested of the necessary funds, staff, and financial means required to provide the appropriate level of care to persons such as Earline Cooley; and

cc. In such other and further ways as Discovery and Trial shall prove.

41. As a direct and proximate result of the Defendants' acts and/or omissions, Plaintiff's decedent, Earline Cooley, suffered injuries and damages as set forth herein and above.

FOR A SECOND CAUSE OF ACTION
(Ordinary Negligence as to All Defendants)

42. Plaintiff restates and re-alleges each and every paragraph previously pled herein as if repeated verbatim.

43. Defendants were negligent, careless, reckless, grossly negligent, willful, and wanton in failing to provide ordinary and basic care in the following particulars:

- a. In failing to provide basic assistance with transfers and ambulation;
- b. In failing to provide adequate fluids; and
- c. In failing to provide the most basic care which does not require medical training or education but is care that, if not provided, will lead to suffering and decline in health as it did in the case at hand.

44. As a direct and proximate result of the Defendants' acts and/or omissions, Earline Cooley suffered injuries and damages as set forth herein and above.

THIRD CAUSE OF ACTION
(Corporate Negligence As To All Defendants)

45. Plaintiff restates and re-alleges each paragraph previously pleaded as if repeated verbatim.

46. The Defendants were negligent, careless, grossly negligent, reckless, willful, wanton, and intentional in their failure to provide Dominion Clemson with adequate and proper management, funding, staffing, and supplies necessary to provide for the appropriate care for residents such as Earline Cooley and provide care within the standard of care.

47. That these Defendants, especially those other than Dominion Clemson, exercised sufficient financial, management, and operational control over Dominion Clemson and knew or should have known that they unreasonably and improperly divested Dominion Clemson of the necessary monies, finances, staff, and supplies necessary to provide care to the residents within the standard of care and care that met the federal and state regulations and statutes which applied to Dominion Clemson.

48. That Defendants other than Dominion Clemson did this through a complex corporate scheme whereby such funds were divested from Dominion Clemson which were necessary for resident/patient care and were siphoned from the facility to the corporate Defendants, whereby other monies from Dominion Clemson were siphoned from the facility through exorbitant rent, exorbitant management fees, and other exorbitant monies taken by the corporate Defendants from Dominion Clemson. That these monies were divested from the facility with the full knowledge that such money was necessary for resident care.

49. As a direct and proximate result of the corporate Defendants' acts and/or omissions, Plaintiff has suffered injuries and damages as set forth hereinabove.

FOR A FOURTH CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

50. Plaintiff restates and re-alleges each paragraph previously pled as if repeated verbatim.

51. The conduct of the Defendants is governed by The Adult Protection Act of South Carolina Code §43-35-5, *et seq*, The Bill of Rights for Residents of Long Term Care Facilities at South Carolina Code §44-81-10, *et seq*, South Carolina Department of Health and Environmental Control Regulations at Regulation 61-84, *et seq*.

52. The Statutes and Regulations set out above were enacted for the benefit and protection of a class of the public, of which Earline Cooley was a member at all times relevant to this action and were designed to protect from the types of injuries that Earline Cooley suffered. The Defendants violated these Statutes and Regulations in their failure to properly care for Earline Cooley and other similarly situated patients at their facility.

53. As a direct and proximate result of the violation of these Statutes and Regulations by the Defendants, which constitutes negligence *per se*, Earline Cooley suffered injuries and damages as set forth above.

54. These representations were careless, negligent, grossly negligent, reckless, willful and wanton in that the Defendants knew or should have known they would not be able to meet these representations for Earline Cooley and in failing to meet these representations for Earline Cooley.

55. As a direct and proximate result of these Defendants' misrepresentations, Earline Cooley suffered injuries and damages as set forth above.

WHEREFORE, Plaintiff prays for judgment against all Defendants in the following particulars:

- a. For actual, punitive and special damages in an amount to be determined by the trier of fact;
- b. For the costs and disbursements of this action;
- c. For the attorneys' fees and costs; and
- d. For such other and further relief as this Court deems just and proper.

Plaintiff respectfully requests a Jury Trial.

CHRISTIAN & CHRISTIAN
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s/Matthew W. Christian
Matthew W. Christian
Attorney for Plaintiff
S.C. Bar No.: 70516

Greenville, South Carolina
Date: October 13, 2021

STATE OF SOUTH CAROLINA)
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 COUNTY OF PICKENS)
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 Square, , Dominion Senior Living,)
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 Defendant(s).)
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IN THE COURT OF COMMON PLEAS

C.A. No.: 2021-CP-39-_____

COMPLAINT
(Jury Trial Demanded)
(Wrongful Death Action)

The Plaintiff would show this Honorable Court the following:

1. The Affidavit of Expert Witness is attached hereto as Exhibit A.
2. At all times relevant herein, Deonda Weldon is and was the daughter of Earline Cooley and is the duly appointed Personal Representative of the Estate of Earline Cooley, who at the time of her death was a resident of Pickens County, South Carolina. The Estate is administered through the Probate Court of Pickens County, South Carolina.
3. That Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square (hereinafter “Dominion Clemson”) is a business organized and existing under the laws of a state other than the State of South Carolina. This Defendant owns and/or leases property, advertises, maintains agents, servants, employees, and transacts business, deriving substantial revenue therefrom, in Pickens County, South Carolina. Dominion Clemson is an assisted living facility licensed by the State of South Carolina

and employs or contracts with related staff to provide assisted living services to patients/residents and represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing such services for persons such as Earline Cooley. At all times relevant herein, agents, employees, servants, and apparent agents of Dominion Clemson acted on behalf of themselves and on behalf of Dominion Clemson. Furthermore, at all times relevant herein, Dominion Clemson acted on behalf of itself and on behalf of Defendants Dominion Clemson, II, LLC, Dominion Senior Living, LLC, Dominion Management Group, LLC, and Dominion Group, LLC. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

4. Upon information and belief, Defendant Dominion Senior Living, LLC (hereinafter “Dominion Senior Living”) is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Senior Living participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Senior Living maintained agents, servants, and employees in Pickens County, South Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion Senior Living is involved with the operation and management of Dominion Clemson. That this Defendant works in conjunction with Defendant Dominion Clemson in providing assisted

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5. Upon information and belief, Defendant Dominion Management Group, LLC (hereinafter “Dominion Management”) is a business organized and existing under the laws of a state other than the State of South Carolina. That this Defendant transacts business in Pickens County, South Carolina, either directly or indirectly through its affiliates, agents, alter egos, servants, employees, and related entities. This Defendant further owns property and maintains agents and servants in Pickens County. At all times relevant herein, Dominion Management participated in the ownership, management, and control of Dominion Clemson to the extent that patient/resident care was affected. Further, Dominion Management maintained agents, servants, and employees in Pickens County, South Carolina and transacts business in Pickens County, South Carolina, deriving substantial revenue therefrom. Upon information and belief, Dominion

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7. Defendant Dominion Clemson II, LLC (hereinafter “Dominion Clemson II”) is a business incorporated in the State of South Carolina. That this Defendant has controlled and managed Dominion Clemson through management agreements, leasing agreements, purchase agreements, subleasing agreements, financing arrangements, and in other ways. That this Defendant works in conjunction with Defendant Dominion Clemson and the Co-Defendants in providing assisted living services to patients/residents such as Earline Cooley. That at all times relevant herein, agents, servants, and employees

of Dominion Clemson, II acted on behalf of themselves and on behalf of Dominion Clemson, II. Dominion Clemson, II acted on behalf of itself and Dominion Clemson. That further, Dominion Clemson acted on behalf of itself and on behalf of Dominion Clemson, II. That further, the actions of this Defendant caused the facility to be divested of necessary funds to adequately staff and operate the facility.

8. Earline Cooley was admitted to the Defendants' facility on or about March 8, 2019 for assisted living facility services and care

9. That at the time of admission, Earline Cooley had a number of diagnoses including, but not limited to, diabetes, neuropathy, hypertension, dementia, anxiety, hyperlipidemia, and depression.

10. That at or around the time of Earline Cooley's admission, Defendants knew or should have known that Earline Cooley was a high risk for falls.

11. The physician's evaluation form at the time of Earline Cooley's admission reflected that Earline Cooley did not have the ability to enter and exit the facility unassisted. The fall prevention program resident risk assessment form dated March 8, 2019 reflected that Earline Cooley had a history of prior falls and had fallen within the past three months. Furthermore, it was noted that she had a history of incontinence which increased her fall risk.

12. The only individual care plan created by the Defendants was dated November 18, 2019, some eight (8) months after her admission to the facility.

13. This care plan from November 2019 reflected for purposes of ambulation/transfer that Earline Cooley uses a walker/cane but did not reflect any additional assistance that she may need in ambulation/transfer.

14. That further, the notes of observation of June 27, 2019 noted that Earline Cooley complained of leg pain.

15. The observation notes of August 31, 2019 reflect that Earline Cooley was observed on the floor in an apartment next to the bed as a result of falling out of her bed onto the floor. It was noted that she had bruising to her upper right buttock as a result of her fall.

16. The notes of observation of October 1, 2019 reflect that Earline Cooley was observed on the floor as the result of a fall when her walker rolled out from under her.

17. On October 2, 2019, the notes reflect that Earline Cooley was complaining of pain all over.

18. On October 16, 2019, the notes of observation state that Earline Cooley was found on the floor in the bathroom as the result of a fall when she lost her balance.

19. On October 21, 2019, the notes of observation reflect that the staff found Earline Cooley on the floor due to a fall after she has pressed her pendant due to the fact that she had lost her balance.

20. The notes of October 30, 2019 state that Earline Cooley had several falls during that month.

21. Physical therapy and occupational therapy orders were given by the medical provider for evaluation and potential therapy to address Earline Cooley's fall risk.

22. On November 15, 2019, the observation notes reflect that Earline Cooley was complaining of pain in her legs. That further, on November 16, 2019, Earline Cooley was complaining of weakness and fatigue.

23. The physical therapy notes of November 20, 2019 reflect that Earline Cooley required “moderate physical assistance” to transfer from sit to stand. That further, the physical therapy notes of this date reflect that Earline Cooley was reporting dizziness upon standing. The physical therapist further noted that Earline Cooley had a slow cadence when walking with a walker and that she needed physical assist for improved walker safety, increased upright positioning, and balance control. The notes further reflect that Earline Cooley needed to be redirected to complete her activities throughout the session. Furthermore, the therapist reflects a diagnosis of “unsteadiness on feet”, “weakness”, “history of falling”, as well as other diagnoses.

24. Despite the physical therapist’s findings as well as the many falls which Earline Cooley had already experienced at Defendants’ facility, no changes were made to her care plan or level of assistance provided with transfers and ambulation.

25. The notes of observation for November 25, 2019 reflect that Earline Cooley fell again while walking to her room from supper as a result of losing her balance and injured her left knee.

26. On December 14, 2019, Earline Cooley fell again and was found in the floor in her room by staff.

27. On December 12, 2019, the chart reflects a staff member found Earline Cooley on the floor as a result of a fall.

28. On December 30, 2019, the chart reflects that a staff member found Earline Cooley on the floor in her room as a result of another fall.

29. On January 14, 2020, staff noted that Earline Cooley was requiring more assistance with getting dressed and walking to the dining room.

30. On February 7, 2020, Earline Cooley had another fall at approximately 4:00 a.m. when she lost her balance and injured her right arm.

31. The notes of observation on February 10, 2020 reflect that Earline Cooley seemed weak. However, despite all of the falls and fall risks, no changes were made to Earline Cooley's care plan.

32. On March 9, 2020, Earline Cooley was found in the hallway by staff when she was walking back to her room and tripped and fell. The chart reflects that she hit her head on the floor and that she was complaining of pain in her right hip.

33. As a result of the fall and injuries to Earline Cooley, she was transported by EMS to the emergency room. At the emergency room, it was noted that Earline Cooley "got tripped while walking with walker and 'walker got away'". She was diagnosed with a fracture of the right femoral head/proximal right femoral neck and a urinary tract infection. The records further reflect that the right leg was shorter and externally rotated as a result of the fracture. Further, as a result of the injuries, she suffered with hypoxia and thrombocytopenia after undergoing surgery to repair her fractured hip.

34. The hospital records further reflect that she had multiple falls at the Defendants' facility and that she needed assistance with walking with her walker as

sometimes the walker “moved quicker for her needing also assistance for ambulation with her walker.”

35. Furthermore, as a result of the surgery and her injuries, Earline Cooley’s dementia was accelerated and significantly deteriorated. She continued to deteriorate from her injuries until she died as a direct and proximate result of her injuries on

36. That the Defendants were aware of the failures to provide adequate care as described above and below and were aware of residents such as Earline Cooley and knew that the failures existed at the facility resulting from the decisions made by the Defendants to purposely understaff and underfund the facility in a way that would maximize corporate profits for the Defendants rather than provide adequate and proper care to the residents such as Earline Cooley. That these duties by the Defendants to the residents such as Earline Cooley were non-delegable duties. Furthermore, the acts, omissions, and decisions of the Defendants directly affected resident care such as that of Earline Cooley, and directly caused her injuries. The acts of the Defendants were negligent, willful, wonton, grossly inadequate, and in a reckless disregard for the safety and wellbeing of patients such as Earline Cooley. That further, the Defendants acted as each other’s agent or apparent agents, alter ego, in a joint enterprise, and with an amalgamation of interest. Further, they are directly liable for their corporate and clinical negligence, all of which combined and contributed to cause Earline Cooley’s injuries.

37. As a direct and proximate result of the Defendants’ acts and/or omissions, Earline Cooley suffered the following injuries and damages:

- a. Injuries about her body;
- b. Femur and hip fracture;

- c. Urinary tract infection;
- d. Hypoxia and low oxygen;
- e. Loss of mobility and range of motion;
- f. Thrombocytopenia;
- g. Head injury;
- h. Skin tears and hematomas;
- i. Loss of dignity and respect;
- j. Worsening dementia and mental status;
- k. Humiliation, fear, anxiety, and emotional and psychological distress;
- l. Pain and suffering;
- m. Loss of enjoyment of life;
- n. Suffering;
- o. Has incurred medical expenses and underwent hospitalization, surgery, and medical treatment which she would not have otherwise had to undergo; and
- o. In such other and further ways as discovery and trial shall prove

38. The Plaintiff will show that this action is brought pursuant to the wrongful death provision of South Carolina Code of Law 15-79-125, South Carolina Code of Laws pursuant to the Common Laws of the State of South Carolina. Further, this action is brought on behalf of the statutory beneficiaries of the Estate of the deceased, Earline Cooley, pursuant to the Laws of the State. The statutory beneficiaries include, but are not limited to Deonda Weldon, Phyllis Elliott, and Debra Galloway, who have and will continue to suffer the loss of companionship, mental shock and suffering, wounded

feelings, grief, sorrow, and deprivation of society as well as the love and affection of Earline Cooley as a direct and proximate result of Defendants' acts and/or omissions.

FIRST CAUSE OF ACTION
(Negligence as to All Defendants)

39. Plaintiff restates and re-alleges each paragraph previously pleaded as if repeated verbatim.

40. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton in the following particulars:

- a. In failing to provide adequate staffing, adequate pay for staff and adequate training for staff at their facility to care for residents/patients such as Earline Cooley with the full knowledge that such inadequate staffing practices would place residents such as Earline Cooley at risk;
- b. In negligently hiring, retaining, and supervising staff at Defendants' facility;
- c. In failing to provide proper, comprehensive, and timely assessments, reassessments, and evaluations outlining all risk factors for Earline Cooley and in failing to properly design, adhere to or modify an appropriate plan of care;
- d. In failing to timely and appropriately implement interventions in a resident with obvious risk of falls and history of falls;
- e. In recognizing, but then failing to appropriately and timely implement proper preventative measures to counteract Earline Cooley's risk for falls;

- f. In failing to advise Earline Cooley and her family that the Defendants could not adequately meet Earline Cooley's needs or provide the level of care and assistance she required;
- g. In failing to transfer Earline Cooley to a facility with higher level of care;
- h. In failing to adequately assist Earline Cooley with transfers, ambulation, and toileting, and in allowing her to fall and break her right femur;
- i. In failing to properly monitor Earline Cooley;
- j. In failing to provide the adequate level of assistance to Earline Cooley to meet her needs;
- k. In failing to take timely and appropriate measures to prevent urinary tract infections;
- l. In failing to timely recognize and treat urinary tract infections once they occurred;
- m. In failing to adequately hydrate and prevent dehydration;
- n. In admitting and retaining Earline Cooley at the facility when she was not qualified for the facility and when the facility could/would not meet her needs;
- o. In failing to have and/or follow appropriate policies, procedures, and guidelines regarding the care and health of residents such as Earline Cooley;
- p. In failing to properly have and follow proper policies, procedures, and guidelines regarding funding, staffing, and operation of Defendants' facility;

- q. In failing to provide and implement proper care plans that would adequately meet Earline Cooley's needs, including her risk for falls, dehydration, urinary tract infections, and other risks which Earline Cooley encountered while a resident at the Defendants' facility;
- r. In failing to timely and properly correct and repair prior failures at the facility, all of which continued and contributed to Earline Cooley's injuries;
- s. In failing to provide services, activities, and care to attain or maintain the highest practical physical, mental, and psychosocial wellbeing of Earline Cooley and in accordance with a written plan of care;
- t. In failing to timely consult with a physician;
- u. In failing to properly follow the care plans;
- v. In failing to properly fund, staff, operate, and manage the facility to the extent that resident care was affected and caused injuries to Earline Cooley;
- w. In negligently administering and operating the Defendants' assisted living facility;
- x. In failing to hire, fire, supervise, and train the employees, agents, staff, and other caregivers at Defendants' facility which were involved in with Earline Cooley's care and treatment;
- y. In failing to comply with the applicable federal and state statutes and regulations designed to protect persons such as Earline Cooley;

- z. In failing to act and provide care as a reasonably prudent assisted living facility would do under the same or similar circumstances;
- aa. In failing to operate, fund, staff, and manage an assisted living facility as reasonable prudent operating, management, holding and real estate companies would do under the same or similar circumstances;
- bb. In causing Dominion Clemson to be divested of the necessary funds, staff, and financial means required to provide the appropriate level of care to persons such as Earline Cooley; and
- cc. In such other and further ways as Discovery and Trial shall prove.

41. As a direct and proximate result of the Defendants' acts and/or omissions, Plaintiff's decedent, Earline Cooley, suffered injuries and damages as set forth herein and above.

FOR A SECOND CAUSE OF ACTION
(Ordinary Negligence as to All Defendants)

42. Plaintiff restates and re-alleges each and every paragraph previously pled herein as if repeated verbatim.

43. Defendants were negligent, careless, reckless, grossly negligent, willful, and wanton in failing to provide ordinary and basic care in the following particulars:

- a. In failing to provide basic assistance with transfers and ambulation;
- b. In failing to provide adequate fluids; and
- c. In failing to provide the most basic care which does not require medical training or education but is care that, if not provided, will lead to suffering and decline in health as it did in the case at hand.

44. As a direct and proximate result of the Defendants' acts and/or omissions, Earline Cooley suffered injuries and damages as set forth herein and above.

THIRD CAUSE OF ACTION
(Corporate Negligence As To All Defendants)

45. Plaintiff restates and re-alleges each paragraph previously pleaded as if repeated verbatim.

46. The Defendants were negligent, careless, grossly negligent, reckless, willful, wanton, and intentional in their failure to provide Dominion Clemson with adequate and proper management, funding, staffing, and supplies necessary to provide for the appropriate care for residents such as Earline Cooley and provide care within the standard of care.

47. That these Defendants, especially those other than Dominion Clemson, exercised sufficient financial, management, and operational control over Dominion Clemson and knew or should have known that they unreasonably and improperly divested Dominion Clemson of the necessary monies, finances, staff, and supplies necessary to provide care to the residents within the standard of care and care that met the federal and state regulations and statutes which applied to Dominion Clemson.

48. That Defendants other than Dominion Clemson did this through a complex corporate scheme whereby such funds were divested from Dominion Clemson which were necessary for resident/patient care and were siphoned from the facility to the corporate Defendants, whereby other monies from Dominion Clemson were siphoned from the facility through exorbitant rent, exorbitant management fees, and other exorbitant monies taken by the corporate Defendants from Dominion Clemson. That

these monies were divested from the facility with the full knowledge that such money was necessary for resident care.

49. As a direct and proximate result of the corporate Defendants' acts and/or omissions, Plaintiff has suffered injuries and damages as set forth hereinabove.

FOR A FOURTH CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

50. Plaintiff restates and re-alleges each paragraph previously pled as if repeated verbatim.

51. The conduct of the Defendants is governed by The Adult Protection Act of South Carolina Code §43-35-5, *et seq*, The Bill of Rights for Residents of Long Term Care Facilities at South Carolina Code §44-81-10, *et seq*, South Carolina Department of Health and Environmental Control Regulations at Regulation 61-84, *et seq*.

52. The Statutes and Regulations set out above were enacted for the benefit and protection of a class of the public, of which Earline Cooley was a member at all times relevant to this action and were designed to protect from the types of injuries that Earline Cooley suffered. The Defendants violated these Statutes and Regulations in their failure to properly care for Earline Cooley and other similarly situated patients at their facility.

53. As a direct and proximate result of the violation of these Statutes and Regulations by the Defendants, which constitutes negligence *per se*, Earline Cooley suffered injuries and damages as set forth above.

54. These representations were careless, negligent, grossly negligent, reckless, willful and wanton in that the Defendants knew or should have known they would not be able to meet these representations for Earline Cooley and in failing to meet these representations for Earline Cooley.

55. As a direct and proximate result of these Defendants' misrepresentations, Earline Cooley suffered injuries and damages as set forth above.

WHEREFORE, Plaintiff prays for judgment against all Defendants in the following particulars:

- a. For actual, punitive and special damages in an amount to be determined by the trier of fact;
- b. For the costs and disbursements of this action;
- c. For the attorneys' fees and costs; and
- d. For such other and further relief as this Court deems just and proper.

Plaintiff respectfully requests a Jury Trial.

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Greenville, South Carolina
Date: October 13, 2021