

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

CAROLYN SUMMERS, individually and by)
and through her Next Friend, CAROL SAMSON,)

and)

CAROL SAMSON, the personal representative)
of the ESTATE OF CARL LEE DEBRODIE,)

Plaintiffs,)

v.)

Case No. 2:18-cv-04044-MDH

SECOND CHANCE HOMES OF FULTON, LLC,)

JURY TRIAL DEMANDED

RACHAEL ROWDEN,)

SHERRY PAULO,)

Serve at: 690 Gregory Lane)
Fulton, Missouri 65251)

ANTHONY FLORES, SR.,)

Serve at: 690 Gregory Lane)
Fulton, Missouri 65251)

CALLAWAY COUNTY PUBLIC)
ADMINISTRATOR'S OFFICE,)

KAREN DIGH ALLEN,)

MISSOURI DEPARTMENT OF)
MENTAL HEALTH,)

MARK STRINGER, Director of the Missouri)
Department of Mental Health,)

MISSOURI DEPARTMENT OF MENTAL)

HEALTH, DIVISION OF DEVELOPMENTAL DISABILITIES,)
)
)
VALERIE HUHNS, Director of the Missouri)
Department of Mental Health, Division of)
Developmental Disabilities,)
)
WENDY WITCIG, Deputy Director of the)
Missouri Department of Mental Health,)
Division of Developmental Disabilities,)
Community Operations,)
)
MARCY VOLNER, Assistant Director of the)
Missouri Department of Mental Health,)
Division of Developmental Disabilities,)
Central Region,)
)
WENDY DAVIS, Director of the Missouri)
Department of Mental Health, Division of)
Developmental Disabilities, Central)
Missouri Regional Office,)
)
CALLAWAY COUNTY SPECIAL SERVICES,)
)
JULIA KAUFMANN, Executive Director of)
Callaway County Special Services,)
)
TIFFANY KEIPP,)
Serve at: 1782 County Road 102.)
Auxvasse, Missouri 65231)
)
MELISSA DELAP,)
Serve at: 1802 Kassem Drive)
Columbia, Missouri 65202)
)
ROBIN REES LOVE,)
Serve at: 10 West 6th St.)
Fulton, Missouri 65251)
)
Defendants.)

FIRST AMENDED COMPLAINT

COME NOW Plaintiffs, by and through undersigned counsel, and for their First Amended Complaint, state as follows:

1. This is an action for damages resulting from the wrongful death of Carl Lee DeBrodie, as well as an action under 42 U.S.C. § 1983, 42 U.S.C. § 1985, and other common law avenues of recovery for deprivations of plaintiffs' rights.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the persons and subject matter in that the acts/omissions forming the basis of this First Amended Complaint took place in Callaway County, Missouri; this matter involves federal claims under 42 U.S.C. §§ 1983 and 1985; and the State of Missouri has consented to proceeding herein upon removal from the Circuit Court of Boone County, Missouri.

3. Venue is proper in this Court because the cause of action arose in Fulton, Callaway County, Missouri.

PARTIES

4. Plaintiff Carolyn Summers is the natural mother of the decedent, Carl Lee DeBrodie, and is a resident of Cole County, Missouri. Ms. Summers is a Class I beneficiary under § 537.080, RSMo.

5. Carol Samson is the sister-in-law of Carolyn Summers and has been appointed as the Next Friend of Plaintiff Carolyn Summers for the purposes of this action.

Ms. Samson has also been appointed as the personal representative of the Estate of Carl Lee DeBrodie in Callaway County Case No. 18CW-PR00010. Ms. Samson is a resident of Osage County, Missouri.

6. Defendant Second Chance Homes of Fulton, LLC (hereinafter “Defendant Second Chance”), is a limited liability company formed under the laws of the State of Missouri. Defendant Second Chance is registered with the Missouri Secretary of State as an LLC for the purpose of owning and operating real estate.

7. Defendant Rachael Rowden (hereinafter “Defendant Rowden”) is a resident of Callaway County, Missouri. Defendant Rowden is sued herein in her official and individual capacities to the furthest extent permitted by law.

8. Defendant Rowden is the owner, operator, manager, and/or supervisor of Defendant Second Chance.

9. Defendant Sherry Paulo (hereinafter “Defendant Paulo”), was, at all times relevant herein, an individual residing in Callaway County, Missouri, and was employed as a “qualified disability professional” with Defendant Second Chance. Defendant Paulo is sued herein in her individual and official capacities to the fullest extent permitted by law and may be served as shown in the caption of this First Amended Complaint.

10. Defendant Anthony Flores, Sr., (hereinafter “Defendant Flores”), was, at all times relevant herein, an individual residing in Callaway County, Missouri, and was employed as a “qualified disability professional” with Defendant Second Chance.

Defendant Flores is sued herein in his individual and official capacities to the fullest extent permitted by law and may be served as shown in the caption of this First Amended Complaint

11. Defendant Callaway County Public Administrator's Office (hereinafter "Defendant Public Administrator") is a public entity located in Callaway County, Missouri, and which is tasked with, among others, acting as a court-appointed guardian and/or conservator for disabled and/or incapacitated individuals residing within Callaway County, Missouri.

12. Defendant Karen Digh Allen (hereinafter "Defendant Allen"), was, at all times relevant to this action, a citizen and resident of the State of Missouri, and who was the duly qualified, elected, and acting Public Administrator of Callaway County. On information and belief, Defendant Allen was the policymaker of Defendant Public Administrator. Defendant Allen is sued herein in her individual and official capacities to the fullest extent permitted by law.

13. Defendant Missouri Department of Mental Health (hereinafter "Defendant DMH"), is an agency of the State of Missouri, and which provides a variety of services to the citizen of Missouri, including, but not limited to, the treatment, habilitation, and rehabilitation of Missourians suffering from mental disorders and developmental disabilities.

14. Defendant Mark Stringer (hereinafter "Defendant Stringer"), is the duly appointed Director of the Missouri Department of Mental Health, and whose office is located in Jefferson City, Cole County, Missouri. On information and belief, the Office of the Director is responsible for the overall operations of Defendant DMH and its divisions. Defendant Stringer is sued herein in his official and individual capacities to the fullest extent permitted by law.

15. Defendant Missouri Department of Mental Health, Division of Developmental Disabilities (hereinafter "Defendant DMH-DD") is a division of Defendant DMH, and which serves a population that has developmental disabilities such as intellectual disabilities, cerebral palsy, head injuries, autism, epilepsy, and certain learning disabilities.

16. Defendant Valerie Huhn (hereinafter "Defendant Huhn") is the duly appointed Director of Defendant DMH-DD, and whose offices are located in Jefferson City, Cole County, Missouri. Defendant Huhn is sued herein in her individual and official capacities to the fullest extent permitted by law.

17. Defendant Wendy Witcig (hereinafter "Defendant Witcig") is, on information and belief, an individual residing in the State of Missouri, and who is the Deputy Director of the Missouri Department of Mental Health, Division of Developmental Disabilities, Community Operations. Defendant Witcig is sued herein in her individual and official capacities to the fullest extent permitted by law.

18. Defendant Marcy Volner (hereinafter “Defendant Volner”), is the duly appointed Assistant Director of the Missouri Department of Mental Health, Division of Developmental Disabilities, Central Region, and on information and belief, whose duties involve the operation, oversight, and management of the Central Region. Defendant Volner is sued herein in her individual and official capacities to the fullest extent permitted by law.

19. Defendant Wendy Davis (hereinafter “Defendant Davis”), is the duly appointed Director of the Missouri Department of Mental Health, Division of Developmental Disabilities, Central Missouri Regional Office and, on information and belief, whose duties involve the operation, oversight, and management of the Central Missouri Regional Office. On information and belief, Defendant Davis’s offices are located in Columbia, Boone County, Missouri. Defendant Davis is sued herein in her individual and official capacities to the fullest extent permitted by law.

20. Defendant Callaway County Special Services (hereinafter “Defendant CCSS”) is, on information and belief, a non-profit entity established to provide support and case-management services for individuals with developmental disabilities in Callaway County, Missouri. On information and belief, Defendant CCSS was administratively dissolved in December 2013 but continued and continues to operate under the name “Callaway County Special Services.”

21. Defendant CCSS is a “County Senate Bill 40 Board” that was established by Callaway County, Missouri.

22. Defendant Julia Kaufmann (hereinafter “Defendant Kaufmann”) is, on information and belief, an individual residing in Boone County, Missouri. Defendant Kaufmann was, at all relevant times, the Executive Director of Defendant CCSS and was charged with the management and oversight of Defendant CCSS; as such, Defendant Kaufmann was the policymaker of Defendant CCSS. Defendant Kaufmann is sued herein in her individual and official capacities to the fullest extent permitted by law.

23. Defendant Tiffany Keipp (hereinafter “Defendant Keipp”), was, at all times relevant to this action, a citizen and resident of the State of Missouri, and was employed by Defendant CCSS as an “SB40 Service Coordinator.” Defendant Keipp is sued herein in her individual and official capacities to the full extent permitted by law and may be served as shown in the caption of this First Amended Complaint.

24. Defendant Melissa Delap (hereinafter “Defendant Delap”), was, at all times relevant to this action, a citizen and resident of the State of Missouri a licensed registered nurse in the State of Missouri, license no. 140313. Defendant Delap was employed by Defendant DMH and/or Defendant DMH-DD as a “Community RN.” Defendant Delap is sued herein in her individual and official capacities to the full extent permitted by law and may be served as shown in the caption of this First Amended Complaint.

25. Defendant Robin Rees Love (hereinafter “Defendant Love”) was, at all times relevant to this action, a citizen and resident of the State of Missouri, and was employed by Defendant Public Administrator as the Callaway County Deputy Public Administrator. Defendant Love is sued herein in her individual and official capacities to the full extent permitted by law and may be served as shown in the caption of this First Amended Complaint.

26. At all times relevant hereto, Defendants were acting and operating through their employees, agents, and/or servants, all of whom were acting within the course and scope of their employment, agency and/or master/servant relationship with Defendants. Accordingly, and to the extent permitted by law, Defendants are liable for the tortious acts and/or omissions of their employees, agents, and/or servants under doctrines of *respondeat superior* and/or vicarious liability.

27. At all times relevant hereto, each defendant’s actions and/or omissions were taken under the color of Missouri law and pursuant to the policies, regulations, or decisions officially adopted or promulgated by Defendant DMH, Defendant DMH-DD, Defendant CCSS, and Defendant Public Administrator.

28. On information and belief, Defendant Second Chance is a private, for-profit entity that is licensed and certified by Defendant DMH and Defendant DMH-DD to serve as a residential healthcare facility for individuals with developmental disabilities.

29. Defendant DMH and/or Defendant DMH-DD contracted with Defendant Second Chance to provide residential healthcare services on behalf of the State of Missouri for individuals with developmental disabilities.

30. Defendant Second Chance receives federal and state monies, including funds from Defendant DMH and Defendant DMH-DD, in exchange for its provision of residential support services for individuals with developmental disabilities.

31. Defendant CCSS contracted and contracts with Defendant DMH and/or Defendant DMH-DD to provide targeted case management services for individuals with developmental disabilities in Callaway County, Missouri.

32. On information and belief, Defendant CCSS receives federal and state monies in exchange for its provision of services with respect to individuals with developmental disabilities in Callaway County, Missouri.

33. On information and belief, Defendant DMH and/or Defendant DMH-DD contracted with Defendant Delap to provide services as a "Community RN" for individuals with developmental disabilities in Callaway County, Missouri, and specifically for Carl.

GENERAL FACTUAL ALLEGATIONS

34. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

35. At all times relevant hereto, Defendant Second Chance operated multiple residential facilities in the Mid-Missouri area, including a residential facility located at 298 B Claymine Drive in Fulton, Callaway County, Missouri (hereinafter “the Facility”).

36. The Facility was licensed and classified by Defendant DMH and Defendant DMH-DD as an Independent Supported Living Facility.

37. The Facility was home to individuals with developmental disabilities, with usually two or three residing at the Facility at any given time.

38. The Facility was located within the boundaries and service area of Missouri Department of Mental Health, Division of Developmental Disabilities, Central Missouri Regional Office.

39. Prior to some unknown time believed to be in the last quarter of 2016, Carl Lee DeBrodie (hereinafter “Carl”) was a 31-year-old resident of Fulton, Callaway County, Missouri.

40. Carl suffered from certain developmental disabilities such that he was under a court-imposed guardianship and conservatorship.

41. On or about January 8, 2008, the Probate Division of the Callaway County Circuit Court adjudicated Carl as an incapacitated and disabled adult in Callaway County Case No. 07CW-PR00138 and appointed Defendant Public Administrator and Defendant Allen to serve as Carl’s guardian and conservator.

42. On October 11, 2016, Defendant Love was appointed to Carl's guardianship case as a Deputy Public Administrator.

43. Defendant Public Administrator, Defendant Allen, and Defendant Love served as Carl's guardian and conservator until his death.

44. Having been adjudicated incompetent and under the guardianship/conservatorship of Defendant Public Administrator, Defendant Allen, and Defendant Love, Carl was unable to choose where or with whom he resided.

45. Those decisions belonged to Defendant Public Administrator, Defendant Allen, and Defendant Love.

46. Carl lived at the Facility ran by Defendant Second Chance in Fulton, Callaway County, Missouri.

47. On or about April 17, 2017, the Fulton Police Department received a report indicating that Carl had gone missing from the Facility.

48. Thereafter, an extensive, eight-day search for Carl ensued, including a wide-sweeping foot search and the use of drones and tracking canines.

49. On or about April 24, 2017, Carl was found dead inside a locked storage unit at Moore EZ Storage, also located in Fulton, Callaway County, Missouri.

50. Carl's body was found placed into a City of Fulton trash bin, which was then put into another wooden container, wherein concrete was poured, thereby encasing Carl's body.

51. Based on the level of decomposition, Carl had been deceased and his body had been encased in concrete for several months.

52. Carl had been missing and/or deceased for several months prior to Defendant Second Chance's filing of a missing person's report in April 2017.

53. Pursuant to § 475.120.2, RSMo, as Carl's guardian, Defendant Public Administrator, Defendant Allen, and Defendant Love had an obligation to act in Carl's best interest.

54. Pursuant to § 475.120.3, RSMo, as Carl's guardian, Defendant Public Administrator, Defendant Allen, and Defendant Love owed Carl the following duties:

- a. Section 475.120.3(1), RSMo—to assure that Carl resided in the best and least restrictive setting reasonably available;
- b. Section 475.120.3(2), RSMo—to assure that Carl received medical care and other needed services; and
- c. Section 475.120.3(3), RSMo—to promote and protect the care, comfort, safety, health and welfare of Carl.

55. Defendant DMH, through Defendant DMH-DD, has developed and promulgated a manual establishing rules and guidelines concerning the "targeted case management," oversight, and supervision of individuals with developmental disabilities (hereinafter "TCM Manual").

56. On information and belief, the TCM Manual applies to and is used and implemented by Defendant DMH-DD, Defendant CCSS, and Defendant Second Chance, including their respective employees and agents.

57. Defendant DMH, through Defendant DMH-DD, has also promulgated a manual establishing rules and guidelines concerning the provision of Community RN services through the Community RN Program, which set forth a Community RN's obligations in monitoring the health and safety of individuals with developmental disabilities who are receiving residential services.

58. Defendant Public Administrator, Defendant Allen, Defendant Love, Defendant CCSS, Defendant Keipp, Defendant Second Chance, Defendant Rowden, and Defendant Paulo, were responsible for providing targeted case management services with respect to Carl.

59. Defendant Delap, as Carl's Community RN, owed him the following duties:

- a. To monitor his health and safety;
- b. To monitor clinical compliance through monthly face-to-face visits with Carl, which also include document assessment, review, and findings on Community RN Monthly Health Summaries;
- c. To complete monthly record reviews including, but not limited to, review of physician's orders, labs, medications, medication administration, records, and consumer-specific monitoring;

- d. To collaborate with Qualified Intellectual Disabilities regarding findings and recommendations pertaining to the health and safety of Carl;
- e. To create, implement, monitor, and enforce clinical quality assurance policies and procedures;
- f. To provide in-house clinical consulting; and
- g. To provide appropriate delegation, clinical training, and supervision of direct care professionals who perform duties such as medication administration and other nursing tasks.

60. At all relevant times, Defendant Public Administrator, Defendant Allen, and Defendant Love were required to act within the standards and practices as set forth in the Missouri Probate Code, specifically Chapters 472–75 of the Revised Statutes of Missouri.

61. At all relevant times, Defendant Public Administrator, Defendant Allen, Defendant Love, Defendant CCSS, Defendant Keipp, Defendant Second Chance, Defendant Rowden, and Defendant Paulo were required to act within the standards and practices as set forth in the Missouri statutes that apply to the provision of residential services for individuals with developmental disabilities, including Ch. 630 of the Revised Statutes of Missouri.

62. At all relevant times, Defendant Public Administrator, Defendant Allen, Defendant Love, Defendant CCSS, Defendant Keipp, Defendant Second Chance,

Defendant Rowden, and Defendant Paulo were required to act within the standards and practices as set forth in the Missouri regulations that apply to the provision of residential services for individuals with developmental disabilities, including 9 CSR 10-1.010, *et seq.*; 9 CSR 40-1.015, *et seq.*; and 9 CSR 45-2.010, *et seq.*

63. According to the TCM Manual, targeted case management involves an ongoing process of monitoring and assessing the quality, timeliness, and effectiveness of services and support received by an individual with developmental disabilities.

64. Defendant CCSS, Defendant Keipp, Defendant Second Chance, Defendant Rowden, and Defendant Paulo were required to provide to monitor, among others, Carl's health, environment, safety, and the exercise of his rights.

65. Defendant CCSS and Defendant Keipp were required to provide monthly face-to-face visits with Carl.

66. Further, Defendant Delap was required to provide monthly face-to-face visits with Carl to monitor his health and safety, and to also provide at least 1.25 hours of nursing services per month.

67. According to the TCM Manual, Defendant Keipp was required to document the outcome of those monthly face-to-face visits in a log note.

68. According to the Community RN Manual, Defendant Delap was required to document her monthly face-to-face visits both in a monthly service log, and in a monthly health summary.

69. Defendant DMH and Defendant DMH-DD have promulgated certain “Division Directives” establishing policies and procedures applicable to Defendant DMH, Defendant DMH-DD, its subdivisions and sub-entities, regional offices, Senate Bill 40 Boards, and not-for-profit agencies involved in the provisions of targeted case management services for individuals with developmental disabilities.

70. At all relevant times, Defendant Second Chance, Defendant Rowden, Defendant Paulo, Defendant CCSS, Defendant Keipp, and Defendant Delap were and are subject to said “Division Directives.”

71. According to Division Directive 3.020, titled “Support Monitoring Policy and Implementation Guidelines,” provides that Defendant CCSS and Defendant Keipp were required to provide monthly face-to-face visits to monitor, among others, Carl’s health, environment, safety, and the exercise of his rights.

72. Because Carl was an individual with developmental disabilities and lived in an Independent Supported Living Facility (i.e., the Facility), Defendant CCSS, Defendant Keipp, and Defendant Delap had a duty to monitor his health and safety, to complete a monthly face-to-face assessment, and to record any findings.

73. As Carl’s Support Coordinator, Defendant Keipp was mandated to report to appropriate authorities, including Defendants DMH and DMH-DD, any suspicions or allegations of physical abuse, sexual abuse, verbal abuse, or neglect of Carl, and also any misuse of Carl’s funds/property.

74. As Carl's Community RN, Defendant Delap was mandated to report to appropriate authorities, including Defendants DMH and DMH-DD, any suspicions or allegations of physical abuse, sexual abuse, verbal abuse, or neglect of Carl, and also any misuse of Carl's funds/property.

75. According to 9 CSR 40-2.075(7), Defendant Second Chance was required to have written policies and procedures in place relating to departures and absences of its residents, including the creation of a mechanism to alert staff when an individual is unaccounted for.

76. As an individual served by Defendant DMH-DD, Carl was entitled to the following rights, among others, pursuant to 9 CSR 45-3.030:

- a. To be treated with respect and dignity as a human being (9 CSR 45-3.030(1)(A));
- b. To be free from physical, emotional, sexual, and verbal abuse, and financial exploitation (9 CSR 45-3.030(1)(C)); and
- c. To report any violation of his rights free from retaliation and without fear of retaliation (9 CSR 45-3.030(1)(R)).

77. Pursuant to 9 CSR 45-3.030(3), Carl's rights under 9 CSR 45-3.030(1) were not to be restricted without affording him due process.

78. As an individual served by Defendant DMH-DD, Carl was entitled to "habilitation" services, which Defendant DMH/Defendant DMH-DD define as "a process

a treatment, training, care or specialized attention which seeks to enhance and maximize the mentally retarded or developmentally disabled person's abilities to cope with the environment and to live as normally as possible."

79. For several months leading up to Carl's reported disappearance, Defendant Allen, Defendant Love, Defendant Keipp, Defendant Rowden, and Defendant Paulo prevented Plaintiffs from seeing or visiting with Carl.

80. Defendant Keipp and Defendant Delap, though obligated to make face-to-face contact with Carl and to document said interactions, failed to do so.

81. Instead of conducting the mandated face-to-face contact, Defendant Keipp drafted and submitted false reports indicating that face-to-face contact had in fact been made.

82. Instead of conducting the mandated face-to-face contact and health evaluations, Defendant Delap drafted and submitted false reports indicating that face-to-face contact had in fact been made.

83. Several months elapsed without face-to-face contact between Carl and Defendant Allen, Defendant Love, Defendant Keipp, and Defendant Delap.

84. Defendant Keipp submitted reports to her supervisors that she had made face-to-face contact with Carl in October 2016, November 2016, December 2016, January 2016, February 2016, and March 2016, but no such contact was made.

85. Defendant Delap submitted reports to her supervisors that she had made face-to-face contact with Carl in October 2016, November 2016, December 2016, January 2016, February 2016, and March 2016, but no such contact was made.

86. In 2016, under the terms of his Individualized Support Plan (hereinafter “ISP”), Carl was under one-on-one supervision by Defendant Second Chance, Defendant Rowden, and Defendant Paulo.

87. For several months leading up to October 2016, Defendant Paulo would regularly and frequently take Carl and another Facility resident to overnight at her own personal residence in Fulton, Callaway County, Missouri.

88. On information and belief, Defendant Paulo would—in addition to forcing Carl to stay at her own personal residence—require Carl to perform manual, unpaid labor around her personal residence.

89. The last time any of Carl’s prescription medication had been filled by his pharmacy was August 2016.

90. The last time Defendant Keipp had face-to-face contact with Carl was September 2016.

91. The last time Defendant Delap had face-to-face contact with Carl was September 2016.

92. The last time Defendant Rowden had face-to-face contact with Carl was July 2016.

93. As early as the first quarter of 2016, Carl was experiencing abnormal health conditions that resulted in a decreased appetite and energy, and moderate to severe weight loss.

94. In 2016, Defendant Second Chance, Defendant Rowden, Defendant Paulo, and Defendant Delap regularly failed to timely submit monthly reports regarding Carl to Defendant Keipp, Defendant CCSS, Defendant Allen, Defendant Love, and Defendant Public Administrator.

95. There were often months-long delays in the submission of the aforementioned, mandated monthly reports.

96. Ultimately, Defendant Keipp and Defendant Love discussed moving Carl and two other Facility residents (whom Defendant Keipp and Defendant Love also serviced/acted as guardian) from the Facility.

97. The two other Facility residents will be referred to herein as "Resident #1" and "Resident #2".

98. On October 13, 2016, Defendant Love notified Defendant Second Chance and Defendant Rowden that as their guardians, Defendant Public Administrator, Defendant Allen, and Defendant Love intended to remove Carl, Resident #1, and Resident #2 from the Facility.

99. On the same day, October 13, 2016, Defendant Rowden called Defendant Love and complained that Defendant Rowden / Defendant Second Chance would be put out of business if Carl, Resident #1, and Resident #2 were removed from the Facility.

100. Thereafter, Defendant Love, Defendant Keipp, and Defendant Rowden agreed to meet to discuss keeping Carl, Resident #1, and Resident #2 at the Facility, and to also discuss a new ISP for Carl.

101. On October 25, 2016, the following individuals met to discuss the potential move: Defendant Love, Defendant Keipp, Defendant Paulo, Defendant Rowden, Resident #1, and Resident #2.

102. Carl was not present for the October 25, 2016, meeting.

103. Defendant Paulo informed those in attendance that Carl was in his room and not in good health, so the group proceeded to hold the meeting and discuss Carl's future in his absence.

104. At the time of the October 25, 2016, meeting, Defendant Keipp had not yet performed a face-to-face visit with Carl for the month of October 2016.

105. Though physically present at the same location, Defendant Keipp and Defendant Love did not make contact with Carl to check on his health and well-being, even though it was reported by Defendant Paulo that Carl was not in good health.

106. On information and belief, as of the time of the October 25th meeting, Carl's health had greatly deteriorated, and he was in need of medical care.

107. Had Defendant Keipp and Defendant Love insisted on seeing Carl, they would have discovered the severity of Carl's health issues, his need for medical attention, and the lack of care being given by Defendant Rowden, Defendant Paulo, and Defendant Second Chance.

108. Instead, Defendant Keipp and Defendant Love agreed to keep Carl, Resident #1, and Resident #2 at the Facility and with Defendant Second Chance, even though Defendant Keipp and Defendant Love had serious concerns of the care at the Facility and the people running it.

109. Defendant Keipp and Defendant Love were aware of verbal abuse occurring towards Carl at the Facility, but they failed to report it or take corrective action.

110. Defendant Keipp and Defendant Love were also aware of physical abuse occurring between Carl and Resident #1, but they failed to report it or take corrective action to end the physical abuse.

111. Around September or October 2016, Defendant Paulo began making Carl and Resident #1 stay overnight at her personal residence in Fulton, Callaway County, Missouri, so that she could, on information and belief, continue to claim 24/7 oversight of Carl and Resident #1 while not actually providing such oversight.

112. Carl and Resident #1 were forced to stay and sleep in Defendant Paulo's basement, where no beds or mattresses were provided.

113. Carl and Resident #1 were forced to physically fight each other for the benefit and amusement of Defendant Paulo and her family, including Defendant Flores.

114. As a result of these forced fighting engagements, Carl suffered serious injuries, including at least six broken ribs.

115. Carl also regularly suffered black eyes and other bruising, which would have been readily apparent to anyone making a face-to-face visit with Carl.

116. On information and belief, had Defendant Keipp and Defendant Love insisted on seeing Carl face-to-face on October 25, 2016, they would have witnessed evidence of the physical abuse Carl had been suffering, and would have caused Carl to be removed from Defendant Second Chance's care.

117. Instead, Defendant Keipp and Defendant Love agreed to keep Carl, Resident #1, and Resident #2 under the care of Defendant Second Chance, Defendant Rowden, and Defendant Paulo.

118. Sometime after October 25, 2016, but before November 24, 2016, Carl and Resident #1 stayed overnight at Defendant Paulo's personal residence in Fulton, Callaway County, Missouri.

119. Again, Carl and Resident #1 were forced to sleep in Defendant Paulo's basement on the concrete floor.

120. During the middle of the night, Defendant Flores was awakened by the sound of Carl's scream, whereupon Defendant Flores went to check on the noise.

121. Defendant Flores found Carl non-responsive and convulsing on the floor of the basement, and Carl appeared to be having a seizure.

122. Instead of calling 911 or for other emergency assistance, Defendant Flores and Resident #1 carried Carl upstairs and placed him into bathtub with the shower running.

123. At this point, Defendant Paulo had also gotten involved and instructed Defendant Flores to go downstairs and leave this to her.

124. Defendant Paulo refused to call 911 or for other emergency assistance, and instead allowed Carl—who was bleeding from his nose and mouth—to continue to convulse in the bathtub.

125. On information and belief, no life-saving measures were attempted that night with respect to Carl.

126. Carl died as a result from the episode.

127. Carl remained in the bathtub for two or three days until he was ultimately placed into the City of Fulton trash can, encased in concrete, and placed into a storage unit, as described above.

128. Had Defendant Love and Defendant Keipp made face-to-face contact with Carl on October 25, 2018, Carl would not have remained at the Facility, would not have ended up at the personal residence of Defendant Paulo, would not have suffered an untreated medical emergency, and would not have suffered an untimely death.

129. For several months leading up to his death, Carl was denied the requisite habilitation services and training.

130. For several months leading up to his death, Carl was subjected verbal abuse by Defendant Paulo, Defendant Second Chance, and other Facility residents.

131. For several months leading up to his death, Carl was subjected physical abuse orchestrated by Defendant Paulo, Defendant Second Chance, and carried out by other Facility residents.

132. Defendant Public Administrator, Defendant Allen, and Defendant Love were wholly derelict in their guardianship of Carl, in that instead of overseeing the conditions of the location where their ward was placed, they instead completely failed to perform their functions as Carl's guardian and continued to allow Carl to suffer physical and verbal abuse at the Facility.

133. Defendant Public Administrator, Defendant Allen, and Defendant Love never followed up with Carl's healthcare providers to ensure that Carl was actually receiving medical care.

134. Defendant Public Administrator, Defendant Allen, and Defendant Love never followed up with Carl's pharmacy to ensure that Carl was actually receiving medications as prescribed.

135. Defendant Delap failed to make the necessary and mandated medical examinations of Carl to facilitate the proper medical care and well-being of Carl.

136. Had Defendant Delap actually performed her mandated tasks, she would have discovered that Carl was not only suffering physical abuse, but that Carl was also in need to serious medical care, which was not available by Defendant Second Chance or its employees.

137. Had Defendant Delap actually performed her mandated tasks, she would have discovered that Carl was not receiving medical treatment as required, and that reports of doctor visits, etc., were being forged by Defendant Paulo.

138. Had Defendant Delap actually performed her mandated tasks, she would have transferred Carl to another healthcare facility, and Carl would not have been forced to overnight at the Paulo residence, where he ultimately died.

139. On information and belief, Defendant Keipp, Defendant Delap, Defendant Allen, and Defendant Love worked together to conceal and suppress the fact that face-to-face contacts were not being performed as required, and had not been performed for several months.

140. Defendant Paulo, Defendant Keipp, and Defendant Delap, and Defendant Love knowingly submitted false reports and false ISPs, including fabricated details of face-to-face contacts and interactions with Carl.

141. Defendant Paulo, Defendant Keipp, Defendant Delap, Defendant Rowden, and Defendant Love worked together to prevent Plaintiffs, family, and friends from visiting and interacting with Carl.

142. Defendant Paulo, Defendant Keipp, Defendant Delap, and Defendant Love represented to Plaintiffs that face-to-face contacts with Carl had been made in the months leading up to his reported disappearance.

143. Those representations to Plaintiffs were false, and no face-to-face contact had been made with Carl for months leading up to his reported disappearance.

144. Defendant Rowden, Defendant Paulo, Defendant Keipp, Defendant Delap, and Defendant Love waited several months to report Carl's disappearance in order to continue to receive and collect state and federal monies for the provision of residential services for Carl.

145. Defendant Rowden, Defendant Paulo, Defendant Keipp, Defendant Delap, and Defendant Love actively prevented Plaintiffs for months from visiting or contacting Carl, with the purpose of concealing the fact that Carl was being subjected to physical abuse, missing, and/or already deceased.

146. Had Defendant Keipp and Defendant Delap actually performed their respective mandated obligations to make monthly face-to-face contacts with Carl and care for his well-being, Defendants Keipp and Delap would have discovered irregularities or deficiencies in the care and treatment of Carl, would have discovered the physical abuse being suffered by Carl, could have removed him from the Facility, and could have obtained for him the medical care necessary to prevent Carl's untimely death.

147. Carl's actual date of death is unknown.

148. Carl's certification of death lists April 24, 2017, as his date of death.

149. Carl's certification of death lists the cause of death as "unknown."

150. On information and belief, Defendant DMH and Defendant DMH-DD did not have any policies or procedures in place to audit or otherwise verify that the agents and entities—including Defendant Second Chance, Defendant CCSS, Defendant Delap, and their employees, agents, etc.—providing targeted case management services for individuals with developmental disabilities were adequately performing their duties and providing the requisite medical services.

151. Defendant Public Administrator did not have any policies or procedures in place to audit or otherwise verify that the location where protectees with developmental disabilities are placed are actually received the necessary habilitation services necessary for the health, safety, and well-being of Defendant Public Administrator's protectees.

152. Carl's death was a foreseeable result, in that it was foreseeable that an individual with developmental disabilities might suffer harm, including lethal harm and medical emergencies, when not cared for, as described above.

153. All Defendants knew or reasonably should have known that the aforementioned actions and/or inactions created a foreseeable risk of injury of the kind sustained by Carl and Plaintiffs.

154. Plaintiffs' and Carl's injuries directly resulted from Defendants' actions and/or inactions.

155. Plaintiff Summers is Carl's next-of-kin for the purposes of § 194.119, RSMo.

156. Defendant Second Chance, Defendant Rowden, Defendant Paulo, Defendant Flores, Defendant Keipp, Defendant Delap, Defendant Allen, and Defendant Love deprived Plaintiffs the opportunity to control the final disposition of Carl's remains.

157. As a direct and proximate result of the actions and/or inactions as set forth above, and the resulting death of Carl Lee DeBrodie, Plaintiffs have sustained damages,

COUNT I – WRONGFUL DEATH

(Against Defendants Second Chance, Rowden, Paulo, and Flores)

158. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

159. Sometime after October 25, 2016, but before November 24, 2016, Carl and Resident #1 stayed overnight at Defendant Paulo's personal residence in Fulton, Callaway County, Missouri.

160. Again, Carl and the other Facility resident were forced to sleep in Defendant Paulo's basement on the concrete floor.

161. During the middle of the night, Defendant Flores was awakened by the sound of Carl's scream, whereupon Defendant Flores went to check on the noise.

162. Defendant Flores found Carl non-responsive and convulsing on the floor of the basement, and Carl appeared to be having a seizure.

163. Instead of calling 911 or for other emergency assistance, Defendant Flores and Resident #1 carried Carl upstairs and placed him into bathtub with the shower running.

164. At this point, Defendant Paulo had also gotten involved and instructed Defendant Flores to go downstairs and leave this to her.

165. Defendant Paulo refused to call 911 or for other emergency assistance, and instead allowed Carl—who was bleeding from his nose and mouth—to continue to convulse in the bathtub.

166. On information and belief, no life-saving measures were taken that night with respect to Carl.

167. Carl died as a result from the episode.

168. Defendant Paulo and Defendant Flores owed Carl a duty to, among others, provide for his health and well-being, which includes the duty to call for emergency health services, if necessary.

169. Defendant Flores and Defendant Paulo, in refusing to obtain emergency medical assistance for Carl, showed a conscious disregard for Carl's life.

170. Had Defendant Flores and/or Defendant Paulo immediately called for emergency assistance upon becoming aware of Carl's seizure, trained healthcare professionals or emergency medical technicians would have properly monitored and

assessed Carl's situation and would have provided necessary life-saving care for Carl, such that Carl's death could have been avoided.

171. Defendant Flores's and Defendant Paulo's refusal to enlist the help of emergency medical personnel caused or contributed to cause Carl's death.

172. As a direct and proximate result of Defendant Flores's and Defendant Paulo's negligence, Carl suffered an untimely death.

173. As a direct and proximate result of Defendant Flores's and Defendant Paulo's negligence, Plaintiffs have suffered actual damages.

174. As a further direct and proximate result of Defendant Flores's and Defendant Paulo's negligence as set forth above and the resulting death of Carl, Plaintiffs have sustained the following damages:

- a. Carl's loss of life;
- b. Loss of companionship and society;
- c. Loss of support;
- d. Loss of services;
- e. Loss of counsel; and
- f. Carl's pain and suffering prior to his death.

175. The deprivation Carl suffered was the result of intentional acts or omissions which caused physical injury and death to Carl, or was the result of willful and wanton

conduct or conduct that was in reckless disregard for the rights of Carl. Such conduct justifies the imposition of damages for aggravating circumstances.

176. The foregoing demonstrates the aggravating circumstances surrounding the care and death of Carl DeBrodie.

177. Defendant Flores's and Defendant Paulo's acts were outrageous and demonstrate a complete and reckless disregard for the rights of Carl DeBrodie and the Plaintiffs sufficient to constitute aggravating circumstances justifying the imposition of exemplary damages.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, and consequential damages; aggravating circumstances, exemplary, and punitive damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

COUNT II – WRONGFUL DEATH
(Against Defendants Love, Keipp, and Delap)

178. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

179. As of October 25, 2016, Carl was suffering from medical conditions of sufficient severity and was of sufficiently poor health that he should have been seen and admitted at a healthcare facility and treated by physicians.

180. On October 25, 2016, Defendant Love, Defendant Keipp, Defendant Rowden, Defendant Paulo, Resident #1, and Resident #2 had a meeting to discuss Carl, Resident #1, and Resident #2's continued residency at the Facility.

181. Defendant Love and Defendant Keipp, knowing that Carl was suffering physical illness, refused to make face-to-face contact with him.

182. Defendant Keipp had not yet made her mandated face-to-face contact with Carl in the month of October 2016.

183. Had Defendant Love and Defendant Keipp made face-to-face contact with Carl on October 25, 2016, Defendant Love and Defendant Keipp would have seen that Carl was in need of serious medical care.

184. Had Defendant Love and Defendant Keipp made face-to-face contact with Carl on October 25, 2016, Defendant Love and Defendant Keipp would have seen that Carl had suffered physical abuse.

185. Defendant Love and Defendant Keipp had concerns related to the care Carl was receiving at the Facility and by Defendant Second Chance, yet Defendant Love and Defendant Keipp failed to check on Carl even though they were located in the same physical location.

186. Defendant Delap failed to perform her mandated and non-discretionary functions as Carl's Community RN, and failed to recognize Carl's seriously deteriorating medical conditions by not making monthly face-to-face contact with Carl.

187. Had Defendant Delap performed a face-to-face visit with Carl in October 2016 as required, she would have discovered that Carl was suffering from serious medical conditions requiring hospitalization, and would have seen the signs of abuse suffered by Carl.

188. Sometime after October 25, 2016, Carl overnighted at Defendant Paulo's residence and suffered an untimely death, as described above.

189. That Carl might suffer an untimely death as a result of an untreated medical condition days after the October 25 meeting is a direct and foreseeable result of Defendant Love and Defendant Keipp not making face-to-face contact with and checking on Carl despite their knowledge of Carl's ill health.

190. That Carl might suffer a medical emergency and not receive adequate responsive care is a foreseeable result of failing to provide any oversight of Defendant Second Chance's and Defendant Paulo's care of Carl.

191. That Carl might suffer an untimely death as a result of an untreated medical condition is a direct and foreseeable result of Defendant Delap failing to make face-to-face contact with Carl in the month of October, and failing to examine his health and well-being.

192. Defendant Keipp's and Defendant Love's failure to make face-to-face contact with Carl on October 25, and failure to get Carl the medical treatment he needed or remove him from the Facility caused or contributed to cause his death.

193. Defendant Delap's failure to make face-to-face contact with Carl in October, and failure to get Carl the medical treatment he needed caused or contributed to cause his death.

194. As a direct and proximate result of Defendant Love's, Defendant Keipp's, and Defendant Delap's negligence as herein described, Plaintiffs have suffered actual damages.

195. As a further direct and proximate result of Defendant Love's, Defendant Keipp's, and Defendant Delap's negligence as set forth above and the resulting death of Carl, Plaintiffs have sustained the following damages:

- a. Carl's loss of life;
- b. Loss of companionship and society;
- c. Loss of support;
- d. Loss of services;
- e. Loss of counsel; and
- f. Carl's pain and suffering prior to his death.

196. The deprivation Carl suffered was the result of intentional acts or omissions which caused physical injury and death to Carl, or was the result of willful and wanton conduct or conduct that was in reckless disregard for the rights of Carl. Such conduct justifies the imposition of punitive damages.

197. The foregoing demonstrates the aggravating circumstances surrounding the care and death of Carl DeBrodie.

198. Defendant Love's, Defendant Keipp's, and Defendant Delap's acts were outrageous and demonstrate a complete and reckless disregard for the rights of Carl DeBrodie and the Plaintiffs sufficient to constitute aggravating circumstances justifying the imposition of exemplary damages.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, and consequential damages; aggravating circumstances, exemplary, and punitive damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

COUNT III – CIVIL RIGHTS VIOLATION PURSUANT 42 U.S.C. § 1983
VIOLATION OF FIFTH AND/OR FOURTEENTH AMENDMENT TO
UNITED STATES CONSTITUTION

(Against Defendants Second Chance, Rowden, Paulo, Allen, Love, Keipp, Delap)

199. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

200. Defendants Second Chance, Rowden, Paulo, Allen, Love, Keipp, and Delap are "persons" for the purposes of a § 1983 action for damages.

201. At all times material hereto, Defendants Second Chance, Rowden, Paulo, Allen, Love, Keipp, and Delap's actions and/or inactions were taken under the color of authority and laws of the State of Missouri.

202. At all times relevant to this action, Defendant Second Chance operated exclusively through the use of state of and federal monies, and had no private-paying consumers.

203. Carl's adjudication as an incompetent person rendered him unable to make decisions regarding his own well-being, including the decision as to where and with whom he could live.

204. Prior to his untimely death, Carl had constitutionally protected liberty interests under the Fourteenth Amendment to the United States Constitution to receive adequate food, shelter, clothing, and medical care.

205. Prior to his untimely death, Carl had constitutionally protected liberty interests under the Fourteenth Amendment to the United States Constitution to live in conditions of reasonable care and safety.

206. Carl, being wholly dependent on state actors, had the constitutionally protected right to bodily safety, as well as the right to habilitation sufficient to achieve his bodily safety.

207. Defendants Second Chance, Rowden, Paulo, Allen, Love, Keipp, and Delap violated Carl's constitutional rights in, among others, failing to properly supervise Carl, the residents of the Facility, the employees of the Facility, and individuals performing targeted case management for Carl; failing to make mandated, non-discretionary monthly face-to-face visits with Carl; failing to make quarterly face-to-face visits with

Carl; failing to report abuse between Carl and Resident #1, and prevent its reoccurrence; failing to provide Carl with medical care; failing to provide Carl with reasonably safe conditions; failing to provide habilitation; and deciding to keep Carl at the Facility.

208. Defendants Second Chance, Rowden, Paulo, Allen, Love, Keipp, and Delap's actions and inactions constitute substantial departures from accepted professional judgment, practice, and standards.

209. Defendants Second Chance, Rowden, Paulo, Allen, Love, Keipp, and Delap did not base their respective actions and inactions on professional judgment.

210. On October 2016, prior to Carl's death, Defendants Keipp and Love were aware of other facilities at which Carl could safely reside, but they declined to move him.

211. Defendants Second Chance, Rowden, Paulo, Allen, Love, Keipp, and Delap's conduct put Carl at risk of serious, immediate, and proximate harm, including death.

212. As a direct and proximate result of Defendants Second Chance, Rowden, Paulo, Allen, Love, Keipp, and Delap's conduct, Plaintiffs were injured and suffered damages, including:

- a. The deprivation of Carl's constitutional rights;
- b. The humiliation, degradation, public ridicule, loss of personal reputation, and emotional distress suffered by Carl;

- c. The present worth or value of the estate which Carl would reasonably be expected to have saved and accumulated as a result of his efforts between the time of his premature death and the end of his natural life, had he lived;
- d. The death and funeral expenses, as well as interest on the cost of said expenses for the period between the date of Carl's premature death and the date on which he could have been expected to die;
- e. The physical and mental pain and suffering of Carl DeBrodie;
- f. The present value of loss of services and support;
- g. All consequential damages;
- h. All actual and compensatory damages, including but not limited to, past and present pain and suffering and medical expenses; and
- i. Any other damages allowed by federal or state law, including but not limited to reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein, including reasonable attorney's fees under 42 U.S.C. § 1988; and for such other and further relief as the Court deems just and proper in the premises.

COUNT IV – CIVIL RIGHTS VIOLATION PURSUANT TO 42 U.S.C. § 1983
VIOLATION OF FIFTH AND/OR FOURTEENTH AMENDMENT TO
UNITED STATES CONSTITUTION

(Against Defendants Second Chance, Rowden, Allen, Stinger, Huhn, Witcig, Volner,
Davis, and Kaufmann)

213. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

214. Defendants Second Chance, Rowden, Allen, Stinger, Huhn, Witcig, Volner, Davis, and Kaufmann are “persons” for the purposes of a § 1983 action for damages.

215. At all times relevant herein, Defendants Second Chance, Rowden, Allen, Stinger, Huhn, Witcig, Volner, Davis, and Kaufmann’s actions and/or inactions were taken under the color of authority and laws of the State of Missouri.

216. Defendant Second Chance and Defendant Rowden are responsible for establishing, maintaining, enforcing, and/or training regarding the official policies, procedures, practices, patterns, and/or customs of Second Chance Homes of Fulton, LLC, for the monitoring, supervising, and otherwise ensuring the health and safety of individuals with developmental disabilities residing within its facilities, including but not limited to: ensuring that residents receive adequate food, shelter, clothing, medical care, and habilitation; ensuring that employees do not remove residents from the Facility overnight; ensuring that employees do not force residents to engage in physical fighting; ensuring that residents are not forced to perform unpaid physical labor; ensuring that medical visits are not fabricated; ensuring that proscribed medications are obtained and

administered; and how a supervisor is to audit that the aforementioned are actually being performed.

217. Defendant Allen is responsible for establishing, maintaining, enforcing, and/or training regarding the official policies, procedures, practices, patterns, and/or customs of the Callaway Public Administrator's Office for the monitoring, supervising, and otherwise ensuring the health and safety of individuals over whom Defendant Public Administrator has been appointed as guardian, including but not limited to: how an individual is supposed to conduct quarterly face-to-face contacts with protectees; how an individual is supposed to report instances of non-contact; how an individual is supposed to report and remediate verbal and physical abuse by the protectee's caregivers or other residents; how an individual is to ensure that the protectee is actually living at a facility where the protectee is supposed to reside; ensure that a protectee is receiving the necessary habilitation services to effect the reasonable care and safety of the individual; and how a supervisor is to audit that the aforementioned are actually being performed.

218. Defendant Stinger, Defendant Huhn, Defendant Witcig, Defendant Volner, and Defendant Davis are responsible for establishing, maintaining, enforcing, and/or training regarding the official policies, procedures, practices, patterns, and/or customs of the Missouri Department of Mental Health and the Missouri Department of Mental Health, Division of Developmental Disabilities (and its sub-divisions) for the monitoring, supervising, and otherwise ensuring the health and safety of individuals with

developmental disabilities under their care, including but not limited to: how an individual is supposed to conduct monthly face-to-face contacts with individuals with developmental disabilities; how an individual is supposed to report instances of non-contact; how a Community RN is to provide medical care to individuals; how a Community RN is to perform face-to-face contact with an individual to whom the RN is assigned; establishing safeguards so that months do not transpire in which face-to-face contacts with an individual with developmental disabilities do not occur; establishing safeguards so that individuals with developmental disabilities receive the habilitation services necessary for an individual; establishing safeguards to ensure that facilities charged with providing residential services to individuals with developmental disabilities are not only providing the necessary food, clothing, shelter, and medical care, but that the individual is actually residing at the facility; how an individual is to verify reports of face-to-face contacts with individuals with developmental disabilities; and how a supervisor is to audit that the aforementioned are actually being performed.

219. Defendant Kaufman is responsible for establishing, maintaining, enforcing, and/or training regarding the official policies, procedures, practices, patterns, and/or customs of Callaway County Special Services, for the monitoring, supervising, and otherwise ensuring the health and safety of individuals with developmental disabilities for whom Callaway County Special Services employees provide support services, including but not limited to: how an individual is supposed to conduct monthly face-to-

face contacts with individuals with developmental disabilities; how an individual is supposed to report instances of non-contact; establishing safeguards so that months do not transpire in which face-to-face contacts with an individual with developmental disabilities do not occur; how an individual is to verify reports of face-to-face contacts with individuals with developmental disabilities; how an individual is supposed to report and remediate verbal and physical abuse by the protectee's caregivers or other residents; how an individual is to ensure that the protectee is actually living at a facility where the protectee is supposed to reside; how to ensure that a protectee is receiving the necessary habilitation services to effect the reasonable care and safety of the individual; and how a supervisor is to audit that the aforementioned are actually being performed.

220. These Defendants, deliberately and with reckless disregard for the constitutional rights of people or persons with developmental disabilities receiving targeted case management services, including Carl DeBrodie, failed to establish adequate and sufficient policies and procedures for training supervisors, Community RNs, Support Coordinators, and case workers to safely effectuate the proper provision of targeted case management and habilitation services, as more specifically described above.

221. The actions and inactions of Defendants Rowden, Paulo, Keipp, Allen, Love, and Delap resulted from the training, or lack thereof, they received in implementing and/or executing the policies, procedures, patterns, statements,

regulations, decisions, customs, and/or practices established, maintained, enforced, and/or adopted by Defendants Second Chance, Rowden, Allen, Stinger, Huhn, Witcig, Volner, Davis, and Kaufmann.

222. Defendants Second Chance, Rowden, Allen, Stinger, Huhn, Witcig, Volner, Davis, and Kaufmann's respective policies, patterns, practices, and/or customs were a moving force behind, and effectively caused, Plaintiffs' injuries and damages.

223. As a direct and proximate result of Defendants Second Chance, Rowden, Allen, Stinger, Huhn, Witcig, Volner, Davis, and Kaufmann's conduct, Plaintiffs were injured and suffered damages, including:

- a. The deprivation of Carl's constitutional rights;
- b. The humiliation, degradation, public ridicule, loss of personal reputation, and emotional distress suffered by Carl;
- c. The present worth or value of the estate which Carl would reasonably be expected to have saved and accumulated as a result of his efforts between the time of his premature death and the end of his natural life, had he lived;
- d. The death and funeral expenses, as well as interest on the cost of said expenses for the period between the date of Carl's premature death and the date on which he could have been expected to die;
- e. The physical and mental pain and suffering of Carl DeBrodie;
- f. The present value of loss of services and support;

- g. All consequential damages;
- h. All actual and compensatory damages, including but not limited to, past and present pain and suffering and medical expenses; and
- i. Any other damages allowed by federal or state law, including but not limited to reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein, including reasonable attorney's fees under 42 U.S.C. § 1988; and for such other and further relief as the Court deems just and proper in the premises.

COUNT V – CIVIL RIGHTS VIOLATION PURSUANT TO 42 U.S.C. § 1983
VIOLATION OF FIFTH AND/OR FOURTEENTH AMENDMENT TO
UNITED STATES CONSTITUTION
(Against Defendants Public Administrator, DMH, DMH-DD, and CCSS)

224. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

225. Defendants Public Administrator, DMH, DMH-DD, and CCSS are governmental bodies that operate through their respective individual employees and agents, and who are "persons" for the purposes of a § 1983 action for damages.

226. At all times relevant herein, on information and belief, these Defendants did not have a policy, procedure, or custom in place whereby reports of mandated,

quarterly or monthly face-to-face contacts could be audited and/or verified by an individual other than the one making the report.

227. Defendant Public Administrator did not have a policy, procedure, or custom in place whereby the actual residence of its protectee could be verified by an individual other than the one making the report.

228. Defendant DMH and Defendant DMH-DD did not did not have a policy, procedure, or custom in place whereby reports by an SB40 Support Coordinator of mandated, monthly face-to-face contacts could be audited and/or verified by someone other than the one making the report.

229. Defendant DMH and Defendant DMH-DD did not did not have a policy, procedure, or custom in place whereby reports by a Community RN of mandated, monthly face-to-face contacts could be audited and/or verified by someone other than the one making the report.

230. These Defendants knew or should have known that situations could arise where, as here, required face-to-face contacts with individuals with developmental disabilities were being reported as completed, but the contacts had in fact not been completed.

231. The need to have a policy or custom in place for the auditing and verification of mandated face-to-face contacts with individuals with developmental disabilities is obvious, and the inadequacy of existing practice was and is likely to result

in the violation of constitutional rights of individuals with developmental disabilities, such that these Defendants can be said to be deliberately indifferent to the needs of individuals with developmental disabilities who cannot ensure for their own safety and well-being, and who are wholly dependent on State actors.

232. Had it been discovered through face-to-face contacts that Carl was not living at the Facility, was enduring physical abuse, and was not receiving adequate food and medical care, Carl could have been moved to another residence and could have received the constitutionally required safety, food, shelter, medical care, and habilitation.

233. As a direct and proximate result of these Defendants' conduct, Carl suffered an untimely and premature death.

234. As a direct and proximate result of these Defendants' conduct, Plaintiffs have been damaged.

235. Based on the foregoing acts and/or omissions, all of which were recklessly indifferent, wanton, and malicious, Plaintiffs should be awarded punitive damages so as to punish these Defendants, and to deter like conduct in the future.

236. As a direct and proximate result of these Defendants' conduct, Plaintiffs were injured and suffered damages, including:

- a. The deprivation of Carl's constitutional rights;
- b. The humiliation, degradation, public ridicule, loss of personal reputation, and emotional distress suffered by Carl;

- c. The present worth or value of the estate which Carl would reasonably be expected to have saved and accumulated as a result of his efforts between the time of his premature death and the end of his natural life, had he lived;
- d. The death and funeral expenses, as well as interest on the cost of said expenses for the period between the date of Carl's premature death and the date on which he could have been expected to die;
- e. The physical and mental pain and suffering of Carl DeBrodie;
- f. The present value of loss of services and support;
- g. All consequential damages;
- h. All actual and compensatory damages, including but not limited to, past and present pain and suffering and medical expenses; and
- i. Any other damages allowed by federal or state law, including but not limited to reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein, including reasonable attorney's fees under 42 U.S.C. § 1988; and for such other and further relief as the Court deems just and proper in the premises.

COUNT VI – NEGLIGENCE

(Defendants Second Chance, Rowden, Paulo, Flores, Keipp, Delap, Allen, and Love)

237. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

238. Defendants owed a duty to Carl DeBrodie to ensure and promote his safety and well-being while he lived at the Facility and was under the care of these Defendants.

239. Defendants owed duties to follow certain statutes and regulations, more specifically described above and applicable to the provision of targeted case management services for individuals with developmental disabilities, including Carl.

240. Defendants breached their duties through their:

- a. Failure to adequately supervise Carl;
- b. Failure to provide Carl with adequate food, safety, shelter, medical care, and habilitation;
- c. (Delap and Keipp) Failure to make monthly face-to-face visits with Carl, said visits being non-discretionary tasks;
- d. Failure to give Carl sufficient and proper attention, despite their knowledge of Carl's developmental disabilities and tendencies;
- e. Failure to adequately supervise the Facility's other residents, despite their knowledge of Carl's developmental disabilities and tendencies, and the other residents' prior history of abusing Carl;
- f. Failure to supervise Defendant Second Chance and its employees;

- g. Failure to implement and enforce rules and procedures with regard to how the Facility's residents' health and safety would be monitored;
- h. Failure to implement and enforce rules and procedures with regard to reporting absences of residents in the Facility;
- i. Failure to hire sufficient personnel to maintain adequate supervision and ensure the safety of the Facility's residents, including Carl;
- j. Failure to hire adequately trained and/or certified individuals charged with the care and supervision of residents of the Facility, including Carl;
- k. Failure to adequately train individuals charged with the care of individuals with developmental disabilities at independent residential facilities;
- l. (Paulo and Flores) Failure to obtain emergency medical treatment when Carl suffered the seizure that led to his death;
- m. (Keipp and Love) Failure to make face-to-face contact with Carl, remove him from the Facility, and obtain medical treatment for him on October 25.

241. As a direct and proximate result of Defendants' negligent acts and/or omissions as described herein, Carl suffered an untimely and premature death.

242. As a direct and proximate result of Defendants' negligent acts and/or omissions as described herein, Plaintiffs have been damaged.

243. Said Defendants' acts and/or omissions, as described herein, were reckless and outrageous and subjected Carl to an unreasonable risk of harm—which resulted in

his untimely death—such that an award of punitive damages to Plaintiffs is warranted by said conduct.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual and compensatory damages; aggravating circumstances damages; exemplary and punitive damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

COUNT VII – CIVIL CONSPIRACY PURSUANT TO
42 U.S.C. § 1983, 42 U.S.C § 1985, AND 42 U.S.C. § 1986
(Against Defendants Second Chance, Rowden, Paulo, Flores, Allen, Love, Delap, and Keipp)

244. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

245. Defendants Second Chance, Rowden, Paulo, Flores, Allen, Love, Delap, and Keipp are “persons” for the purpose of a § 1983 action for damages.

246. At all times material hereto, these Defendants’ actions were made under the color and authority of the laws of the State of Missouri.

247. These Defendants, through either express or implicit agreement, entered into a conspiracy.

248. The intent of the conspiracy was to deprive the Plaintiffs, either directly or indirectly, of their civil rights.

249. The purpose of the Defendants’ individual and combined efforts to cover up the fact and cause of Carl’s death while at Defendant Paulo’s residence and under the

care of these Defendants, was to deprive the Plaintiffs of their constitutional rights, including but not limited to their right to seek redress for their grievances through the courts, right to equal protection under the law, and right to due process of law.

250. The words and actions of these Defendants constitute overt acts and were said and done in furtherance of a conspiracy, including but not limited to the encasing of Carl in concrete, the months of failing to make face-to-face visits with Carl, the submission of fabricated reports indicating said face-to-face visits were being made, the falsification of signatures related to doctor's visits; status reports submitted in Carl's guardianship case, the ongoing physical abuse at the Facility, the fact of Carl no longer residing at the Facility, and the continued receipt of state and federal monies following Carl's untimely death.

251. These Defendants each had actual knowledge of the conspiracy, the power to prevent or aid in the prevention of the conspiracy, and neglected or refused to prevent the conspiracy.

252. As a direct and proximate result of Defendants' illegal and unjustified conduct, the Plaintiffs were injured and are entitled to recover:

- a. Actual, compensatory, consequential, and all other allowable damages against Defendants in an amount as yet to be determined;
- b. Plaintiffs' costs in this action, including reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988;

- c. Punitive damages; and
- d. Such relief as the Court deems just and equitable.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein, including reasonable attorney's fees under 42 U.S.C. § 1988; and for such other and further relief as the Court deems just and proper in the premises.

COUNT VIII – CIVIL CONSPIRACY

(Against Defendants Second Chance, Rowden, Paulo, Flores, Allen, Love, Delap, and Keipp)

253. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

254. These Defendants, having a unity of purpose, common design, and/or understanding or meeting of the minds, entered in a conspiracy to unlawfully cover-up the facts and details of the Carl DeBrodie's death while at Defendant Paulo's residence.

255. The purpose of Defendants' conspiracy was, through an individual and combined effort to cover-up the cause of Carl's death, to deprive the Plaintiffs of their constitutional rights, including but not limited to their right to seek redress for their grievances through the courts, right to equal protection under the law, and right to due process of law.

256. The words and actions of these Defendants constitute overt acts and were said and done in furtherance of a conspiracy, including but not limited to the encasing of Carl in concrete, the months of failing to make face-to-face visits with Carl, the submission of fabricated reports indicating said face-to-face visits were being made, the falsification of signatures related to doctor's visits; status reports submitted in Carl's guardianship case, the ongoing physical abuse at the Facility, the fact of Carl no longer residing at the Facility, and the continued receipt of state and federal monies following Carl's untimely death.

257. As a direct and proximate result of Defendants' illegal and unjustified conduct, the Plaintiffs were injured and are entitled to recover:

- a. Actual, compensatory, consequential, and all other allowable damages against Defendants in an amount as yet to be determined;
- b. Punitive damages; and
- c. Such relief as the Court deems just and equitable.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

COUNT IX – RIGHT OF SEPULCHER (§ 194.119, RSMo)

(Against Defendants Second Chance, Rowden, Paulo, Flores, Allen, Love, Delap, and Keipp)

258. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

259. Plaintiff Carolyn Summers is the natural mother of Carl, and whose parental rights had not been terminated prior to Carl's death.

260. Plaintiff Carol Samson is the personal representative of the Estate of Carl Lee DeBrodie in Callaway County Case No. 18CW-PR00010.

261. The guardianship and conservatorship of Carl ended upon his death in October/November 2016.

262. Defendants Allen and Love never attempted to, and in fact had no role in directing the final disposition of Carl's body upon the finding of his remains in April 2018.

263. Instead, Plaintiffs directed the final disposition of Carl's remains.

264. Defendants Allen and Love thus acknowledged Plaintiffs' right to direct the final disposition of Carl's remains, and have waived any alleged right to direct the final disposition of Carl's body—both through their acquiescence to Plaintiffs actually directing the final disposition, and through their wrongdoing as alleged herein.

265. Plaintiff Summers is the "next-of-kin" pursuant to § 194.119, RSMo, and as such, were entitled to direct the final disposition of Carl's body.

266. Defendants Second Chance, Rowden, Paulo, and Flores, through their mistreatment of Carl's body and interference with the internment process as more specifically described herein, interfered with Plaintiffs' right to direct the final disposition of Carl's body.

267. Defendants Allen and Love, through their complete failure and dereliction in performing their duties as Carl's guardian—including the failure to know whether Carl was alive, the failure to know where Carl was living prior to his death, and the failure to know that Carl had not been at the Facility for roughly five months after his death—resulted in the significant delay in Plaintiffs being able to arrange for the final disposition of Carl's body.

268. Defendant Keipp, through her complete failure and dereliction in performing her duties as Carl's Support Coordinator—including the failure to know whether Carl was alive, the failure to know where Carl was living prior to his death, and the failure to know that Carl had not been at the Facility for roughly five months after his death—resulted in the significant delay in Plaintiffs being able to arrange for the final disposition of Carl's body.

269. Defendant Delap, through her complete failure and dereliction in performing her duties as Carl's Community RN—including the failure to know whether Carl was alive, the failure to know where Carl was living prior to his death, and the failure to know that Carl had not been at the Facility for roughly five months after his

death—resulted in the significant delay in Plaintiffs being able to arrange for the final disposition of Carl’s body.

270. Further, said delay resulted in Carl’s body being severely decomposed, which interfered with Plaintiffs’ ability to choose the method of disposition of Carl’s remains.

271. Plaintiffs suffered injuries and, including mental anguish and funeral expenses.

272. These Defendants’ conduct as described herein was reckless, outrageous, and wanton, such that an award of punitive damages to Plaintiffs is warranted in order to punish these Defendants and deter like conduct from Defendants and others in the future.

273. As a direct and proximate result of Defendants’ illegal and unjustified conduct, the Plaintiffs were injured and are entitled to recover:

- a. Actual, compensatory, consequential, and all other allowable damages against Defendants in an amount as yet to be determined;
- b. Punitive damages; and
- c. Such relief as the Court deems just and equitable.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual, compensatory, consequential, and all other allowable damages; punitive

damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

COUNT X – NEGLIGENT SUPERVISION AND/OR RETENTION

(Defendants Second Chance and Rowden)

274. Plaintiffs hereby incorporate and re-allege the foregoing paragraphs as if fully set forth herein.

275. Defendants Second Chance and Rowden's continued employment of Defendant Paulo and Defendant Flores represented an unreasonable risk of harm to Carl.

276. Defendant Second Chance and Defendant Rowden were aware that Defendant Paulo had a history of abusive, threatening, and callous behavior towards residents at the Facility, including Carl.

277. Defendant Second Chance and Defendant Rowden were aware that Defendant Flores had a history of abusive behavior towards residents at the Facility, including Carl.

278. Defendant Second Chance and Defendant Rowden were aware that Defendant Paulo had a history stealing funds from residents at the Facility, and were aware that Defendant Paulo was manipulating certain financials.

279. In or about August 2016, Defendant Second Chance and Defendant Rowden took away some financial responsibilities from Defendant Paulo because of her misdealings.

280. Based on Defendant Paulo's past abusive, threatening, and callous behavior, and her financial misdealings, it was foreseeable that Defendant Paulo might cause harm to a resident at the Facility, such as Carl, and then attempt to continue to receive money on account of the resident's absence.

281. Based on Defendant Flores's past abusive behavior, and his relationship with Defendant Paulo, it was foreseeable that Defendant Flores might cause harm to a resident at the Facility, such as Carl, and then attempt to continue to receive money on account of the resident's absence.

282. By continuing to employ Defendants Paulo and Flores, Defendants Second Chance and Rowden were negligent.

283. Carl's abuse, violations of his constitutional rights, and his untimely death were the direct and foreseeable result of Defendants Second Chance and Rowden's continued employment of Defendant Paulo and Defendant Flores.

284. As a direct and proximate result of Defendants' negligent acts and/or omissions as described herein, Carl suffered an untimely and premature death.

285. As a direct and proximate result of Defendants' negligent acts and/or omissions as described herein, Plaintiffs have been damaged.

286. Said Defendants' acts and/or omissions, as described herein, were reckless and outrageous and subjected Carl to an unreasonable risk of harm—which resulted in

his untimely death—such that an award of punitive damages to Plaintiffs is warranted by said conduct.

WHEREFORE Plaintiffs pray for a judgment in excess of \$25,000.00; for their actual and compensatory damages; aggravating circumstances damages; exemplary and punitive damages; for their costs incurred herein; and for such other and further relief as the Court deems just and proper in the premises.

JURY DEMAND

287. Plaintiffs hereby demand a trial by jury.

Respectfully submitted,

CARSON & COIL, P.C.

/s/ R.L. Veit

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