

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ESTATE OF MARY CURTIS,  
DECEASED; LAURA LATRENTA, AS  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF MARY CURTIS;  
AND LAURA LATRENTA,  
INDIVIDUALLY,

Appellants,

vs.

SOUTH LAS VEGAS MEDICAL  
INVESTORS, LLC, D/B/A LIFE CARE  
CENTER OF SOUTH LAS VEGAS,  
F/K/A LIFE CARE CENTER OF  
PARADISE VALLEY; SOUTH LAS  
VEGAS INVESTORS LIMITED  
PARTNERSHIP; LIFE CARE  
CENTERS OF AMERICA, INC.; AND  
CARL WAGNER, ADMINISTRATOR,

Respondents.

Supreme Court Case No. 79396

District Court Case No. A-19-790132-0  
Electronically Filed  
Sep 06 2019 04:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT  
CIVIL APPEALS**

**DOCKETING STATEMENT CIVIL APPEALS**

Appellants, Laura Latrenta, as Personal Representative of The Estate of Mary Curtis, and Laura Latrenta, Individually, by and through the undersigned counsel, hereby submit this Docketing Statement.

1. Judicial District: Eighth Judicial District

Department: VI

County: Clark

Judge: Jacqueline Bluth

District Ct. Case No.: A-19-790152-C

**2. Attorney filing this docketing statement:**

MICHAEL DAVIDSON, ESQ.  
Nevada Bar No. 000878  
**KOLESAR & LEATHAM**  
400 S. Rampart Blvd., Suite 400  
Las Vegas, NV 89145  
(702) 362-7800  
*Attorney for Appellants*

MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
**BOSSIE, REILLY & OH, P.C.**  
1430 E. Missouri Ave., Suite B225  
Phoenix, AZ 85014  
(602) 553-4552  
*Attorney for Appellants*

Clients: Estate of Mary Curtis, Deceased; Laura Latrenta, As Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, Individually

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

S. BRENT VOGEL, ESQ.  
Nevada Bar No. 06858  
ERIN E. JORDAN, ESQ.  
Nevada Bar No. 10018  
**LEWIS BRISBOIS BISGAARD & SMITH LLP**  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
*Attorney for Respondents*

Client(s): South Las Vegas Medical Investors, LLC, d/b/a Life Care Center Of South Las Vegas, f/k/a Life Care Center of Paradise Valley; South Las Vegas Investors Limited Partnership; Life Care Centers Of America, Inc.; and Carl Wagner

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                                     |
| <input type="checkbox"/> Summary judgment                   | <input checked="" type="checkbox"/> Failure to state a claim                      |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                                     |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): <u>barred by statute of limitations</u> |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification           |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): .....                       |

**5. Does this appeal raise issues concerning any of the following? No**

- Child Custody
- Venue
- Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

**Case Name:**

ESTATE OF MARY CURTIS, DECEASED; LAURA LATRENTA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MARY CURTIS; AND LAURA LATRENTA, INDIVIDUALLY

vs.

SOUTH LAS VEGAS MEDICAL INVESTORS, LLC, D/B/A LIFE CARE CENTER OF SOUTH LAS VEGAS, F/K/A LIFE CARE CENTER OF PARADISE VALLEY; SOUTH LAS VEGAS INVESTORS LIMITED PARTNERSHIP; LIFE CARE CENTERS OF

AMERICA, INC.; AND CARL WAGNER,  
ADMINISTRATOR  
**Docket No.:** 77810

**Case Name:**

ESTATE OF MARY CURTIS, DECEASED; LAURA  
LATRENTA, AS PERSONAL REPRESENTATIVE OF  
THE ESTATE OF MARY CURTIS; AND LAURA  
LATRENTA, INDIVIDUALLY

vs.

ANNABELLE SOCAOCO, N.P.; IPC HEALTHCARE,  
INC. aka THE HOSPITALIST COMPANY, INC.;  
INPATIENT CONSULTANTS OF NEVADA, INC.; IPC  
HEALTHCARE SERVICES OF NEVADA, INC.; and  
HOSPITALISTS OF NEVADA, INC.

**Docket No.:** 79116

- 7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

On September 10, 2017, the Eighth Judicial District Court (Clark County) consolidated *Estate of Mary Curtis v. Saxena*, Case No. A-17-754013-C, with *Estate of Mary Curtis v. South Las Vegas Medical Investors, LLC, et al.*, Case No. A-17-750520-C.

A notice of appeal for *Estate of Mary Curtis v. South Las Vegas Medical Investors, LLC, et al.* was filed on December 27, 2018 and is now pending before the Supreme Court as Case No. 77810.

Another notice of appeal for *Estate of Mary Curtis v. South Las Vegas Medical Investors, LLC, et al.* was filed on July 1, 2019 and is now pending before the Supreme Court as Case No. 70116.

- 8. Nature of the action.** Briefly describe the nature of the action and the result below:

On February 2, 2017, in Case No. A-17-750520-C, Plaintiffs filed a (“Life Care Defendants” or “Respondents”) alleging causes of action for (1) abuse/neglect

of an older person pursuant to N.R.S. § 41.1395, (2) wrongful death by the Estate, (3) wrongful death by Ms. Curtis' surviving daughter, and (3) bad faith tort.

In short, Plaintiffs' claims against Life Care Defendants are based upon the injuries Ms. Curtis sustained during her residency at Life Care Defendants' nursing home facility called Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley ("the facility"). Ms. Curtis entered the facility on March 2, 2016. Mary Curtis was 90 years old at the time of her admission and therefore was considered an "older person" under NRS 41.1395. Within a week of her admission, Life Care Defendants twice permitted her to fall. Additionally, Life Care Defendants administered a drug to Mrs. Curtis that had not been prescribed for her—morphine, in fact. As found by the district court, Ms. Curtis was administered "a dose of morphine prescribed to another resident." Life Care Defendants knew they had wrongly administered morphine to Ms. Curtis yet failed to act timely upon that discovery, instead retaining Ms. Curtis as a resident until March 8, 2016. After Ms. Curtis' daughter discovered Ms. Curtis in distress on March 8, 2016, Life Care Defendants called 911 and emergency personnel transported Ms. Curtis to the hospital where she was diagnosed with anoxic brain encephalopathy. Ms. Curtis died three days later of morphine intoxication.

On September 10, 2018, almost two years after Plaintiffs filed the Complaint against the Life Care Defendants, the Life Care Defendants filed their Motion for

Summary Judgment arguing that Plaintiffs' allegations were essentially allegations of professional negligence under 41A.015 and, so, Plaintiffs were required to file an expert affidavit when Plaintiffs originally filed the Complaint. Life Care Defendants argued that pursuant to NRS 41A.017, the case must be dismissed because an affidavit of merit was not included. In the alternative, Life Care Defendants argued that if the district court did not want to apply the entirety of Chapter 41A to Plaintiffs' claims, then the district court should still apply 41A.035 to limit Plaintiffs' pain and suffering damages to \$350,000.

On October 4, 2018, Plaintiffs filed a Response to Life Care Defendants' Motion for Summary Judgment.

On October 31, 2018, the district court held a hearing on Defendants' Motion for Summary Judgment.

On December 7, 2018, the district court entered its Order Granting Defendants' Motion for Summary Judgment and dismissed the case against the Life Care Defendants without prejudice and for lack of jurisdiction.

On December 11, 2018, Life Care Defendants filed the Notice of Entry of Order Granting Defendants' Motion for Summary Judgment. In the Order Granting Defendants' Motion for Summary Judgment, the district court directed entry of judgment in accordance with NRCP 54(b).

On December 27, 2018, Plaintiffs filed a Notice of Appeal of the Order Granting Defendants' Motion for Summary Judgment. The appeal is currently pending before the Supreme Court as Case No. 77810.

On February 27, 2019, in the Eighth Judicial District Court below, Plaintiffs filed a Complaint against the Life Care Defendants for (1) abuse/neglect of an older person and (2) bad faith tort.

On May 3, 2019, the Life Care Defendants filed their Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCPP 12(b)(5) arguing that District Court Case No. A-17-750520-C/Supreme Court Case No. 77810 precluded Plaintiffs new case against the Life Care Defendants.

On May 13, 2019, Plaintiffs filed Plaintiffs' Opposition to Defendants' Motion to Dismiss explaining to the district court that Plaintiffs' claims were not precluded because the previous court had merely dismissed the case without prejudice and for lack of jurisdiction, which are not valid final judgments for claim preclusion purposes. Plaintiffs further explained that judicial estoppel prevented the Life Care Defendants from asserting claim preclusion in any event.

On June 4, 2019, the Eighth Judicial District Court held a hearing on Defendants' Motion to Dismiss.

On July 5, 2019, the district court entered its Order Granting Defendants' Motion to Dismiss.

On July 15, Life Care Defendants filed the Notice of Entry of Order Granting Defendants' Motion to Dismiss.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

A question of statewide public importance and upon which there is an inconsistency in the decision of the district court and the Supreme Court's decision in *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048 (2008). The district court ignored the rule from *Ruby* that a valid final judgment does not include a case dismissed "for some reason (jurisdiction, venue, failure to join a party) that is not meant to have preclusive effect." *Ruby*, 124 Nev. at 1054.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression



- An issue of public policy
- An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- A ballot question

If so, explain:

Reversal of well-settled Nevada precedent (identify the case(s))

- *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054 (2008). The district court ignored the rule from *Ruby* that a valid final judgment does not include a case dismissed “for some reason (jurisdiction, venue, failure to join a party) that is not meant to have preclusive effect.”

- 13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter is presumptively retained by the Supreme Court under NRAP 17(a)(12) as the matters on appeal raise questions of statewide public importance and are upon which there is an inconsistency between the published decision of the Supreme Court and the district court's rulings.

- 14. Trial.** If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial?

N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

### TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from:**

July 5, 2019

**17. Date written notice of entry of judgment or order was served:**

July 15, 2019

Was service by:

Delivery

Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59):**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

N/A

NRCP 50(b)

NRCP 52(b)

NRCP 59

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion

N/A

- (c) Date written notice of entry of order resolving tolling motion was served

N/A

**19. Date notice of appeal filed:**

August 8, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:**

NRAP 4(a)

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

NRAP 3A(b)(1)       NRS 38.205

NRAP 3A(b)(2)       NRS 233B.150

NRAP 3A(b)(3)       NRS 703.376

Other (specify)

- (b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) applies because Appellants are appealing the final judgment entered in the action or proceeding commenced in the court in which the judgment was rendered.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Estate of Mary Curtis

Laura Latrenta (as Personal Representative of the Estate and individually)

South Las Vegas Medical Investors, LLC, d/b/a Life Care Center Of South Las Vegas, f/k/a Life Care Center of Paradise Valley

South Las Vegas Investors Limited Partnership

Life Care Centers of America, Inc.

Carl Wagner

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

- Abuse/neglect of an Older Person Pursuant by Estate against the Life Care Defendants – July 15, 2019
- Bad Faith Tort by the Estate against the Life Care Defendants – July 15, 2019

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

Yes                       No

**25. If you answered “No” to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes                       No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes                       No

**26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

N/A

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal

- Notices of entry for each attached order

**VERIFICATION**

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Estate of Mary Curtis, Laura Latrenta, as Michael D. Davidson, Esq.  
Personal Representative and Individually Kolesar & Leatham  
Name of Appellants Name of counsel of record

September 6, 2019 /s/ Michael D. Davidson, Esq.  
Date Signature of counsel of record

Nevada, Clark County  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 6<sup>th</sup> day of September, 2019, I served a copy of this completed docketing statement upon all counsel of record:

By personally serving it upon him/her; or

By mailing it by first class mail with sufficient postage prepaid to the following address(es):

S. BRENT VOGEL, ESQ.

Nevada Bar No. 06858

ERIN E. JORDAN, ESQ.

Nevada Bar No. 10018

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

*Attorney for Respondents*

*/s/ Kristina R. Cole*

---

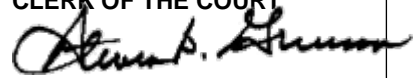
An Employee of KOLESAR & LEATHAM

# EXHIBIT 1

(Complaint for Damages filed on 02/27/2019)

# EXHIBIT 1





1 **COMP**  
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**KOLESAR & LEATHAM**  
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11 *Attorneys for Plaintiffs*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 \* \* \*

15 Estate of MARY CURTIS, deceased; LAURA  
16 LATRENTA, as Personal Representative of the  
Estate of MARY CURTIS; and LAURA  
17 LATRENTA, individually,

18 Plaintiffs,

19 vs.

20 SOUTH LAS VEGAS MEDICAL  
21 INVESTORS, LLC dba LIFE CARE CENTER  
OF SOUTH LAS VEGAS f/k/a LIFE CARE  
22 CENTER OF PARADISE VALLEY; SOUTH  
LAS VEGAS INVESTORS LIMITED  
23 PARTNERSHIP; LIFE CARE CENTERS OF  
AMERICA, INC.; CARL WAGNER,  
Administrator; and DOES 1-50, inclusive,

24 Defendants.

CASE NOA-19-790152-C

DEPT NO,Department 29

25 **COMPLAINT FOR DAMAGES**

- 26 1. Abuse/Neglect of an Older Person
- 27 2. Bad Faith Tort

28 Plaintiffs Estate of Mary Curtis, deceased; Laura Latrenta, as Personal Representative of the Estate of Mary Curtis; and Laura Latrenta, individually, by and through their attorneys of record, Kolesar & Leatham and Wilkes & McHugh, P.A., hereby submit this Complaint against

KOLESAR & LEATHAM  
400 S. Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145  
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 Defendants South Las Vegas Medical Investors, LLC dba Life Care Center of South Las Vegas  
2 f/k/a Life Care Center of Paradise Valley; South Las Vegas Investors Limited Partnership; Life  
3 Care Centers of America, Inc.; Carl Wagner; and Does 1 to 50, inclusive, and allege as follows:

4 **GENERAL ALLEGATIONS**

5 **THE PARTIES**

6 **PLAINTIFFS**

7 1. At all relevant times, Mary Curtis resided in the city of Las Vegas in the County  
8 of Clark, Nevada. Mary Curtis was born on December 19, 1926 and died on March 11, 2016 in  
9 Las Vegas, Nevada.

10 2. Decedent Mary Curtis suffered significant physical injury while a resident at Life  
11 Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley and ultimately a  
12 painful death. Ms. Curtis's injuries and death were caused by events that occurred in the city of  
13 Las Vegas in the County of Clark, Nevada.

14 3. At all times material Plaintiff Laura Latrenta was the natural daughter and  
15 surviving heir of Ms. Curtis. At all relevant times she was an individual and resident of  
16 Harrington Park, New Jersey. Laura Latrenta is also the Personal Representative of Ms. Curtis's  
17 estate for purposes of this litigation.

18 **DEFENDANTS**

19 4. At all relevant times, Defendants Defendant South Las Vegas Medical Investors,  
20 LLC dba Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley, a  
21 limited liability company, and Does 1 through 12 (hereinafter "Facility Defendants") were  
22 licensed and doing business as Life Care Center of Paradise Valley in Las Vegas, Nevada, Clark  
23 County, which is located at 2325 E. Harmon Ave., Las Vegas, NV 89119 (hereinafter  
24 "Facility").

25 5. At all relevant times, Defendants South Las Vegas Investors Limited Partnership,  
26 Life Care Centers Of America, Inc., and Does 13 through 25 (hereinafter "Management  
27 Defendants") owned, operated, and/or managed Facility, and furthermore participated in,  
28 authorized, and/or directed the conduct of Facility and its respective agents and employees.

1           6.       At all relevant times, Facility was in the business of providing long-term care as a  
2 24-hour nursing facility and as such was subject to the requirements of all corresponding statutes  
3 and regulations governing the operation of a 24-hour nursing facility.

4           7.       Plaintiffs are informed and believe and thereon allege that at all relevant times,  
5 Defendants Carl Wagner and Does 26 through 38 were employed as the licensed administrators  
6 of Facility (hereinafter "Administrators").

7           8.       At all relevant times, Carl Wagner was and is a resident of the State of Nevada.

8           9.       Plaintiffs are informed and believe and thereon allege that Defendants Does 39  
9 through 50 are other individuals or entities that caused or contributed to injuries suffered by Ms.  
10 Curtis as discussed below.

11          10.       Defendants Does 1 through 50 are persons and/or entities whose relationships to  
12 the named Defendants, or whose acts or omissions, give rise to legal responsibility for the  
13 damages incurred by Ms. Curtis, but whose true identities, at the present time, are unknown to  
14 Plaintiffs. These persons are hereby notified of Plaintiffs' intention to join them as defendants if  
15 and when additional investigation or discovery reveals the appropriateness of such joinder.  
16 Plaintiffs will ask leave of Court to amend this Complaint to show such true names and  
17 capacities of Doe Defendants when the names of such defendants have been ascertained.  
18 (Hereinafter "Defendants" refers to Facility, Management Defendants, Administrators, and Does  
19 1 through 50).

20          11.       Each fact, act, omission, event, and circumstance herein mentioned and described  
21 occurred in Clark County, Nevada, and each Defendant is a resident of Clark County, has its  
22 principal place of business in Clark County, or is legally doing business in Clark County.

23          12.       Because Defendants are not "providers of health care," as explicitly defined in  
24 NRS 41A.017, the provisions of NRS Chapter 41A do not apply to this case. However, in an  
25 abundance of caution, Plaintiffs have attached an expert affidavit (**Exhibit 1**) that supports the  
26 allegations in this Complaint.

**DIRECT AND VICARIOUS LIABILITY**

1  
2           13.     At all relevant times, Defendants owned, operated, and/or managed the Facility,  
3 and furthermore participated in, authorized, and/or directed the conduct of the Facility and its  
4 respective agents and employees. Defendants are therefore directly liable for their own  
5 negligence, recklessness, and other tortious conduct, in the hiring and management of their  
6 agents and employees, as is more fully alleged herein.

7           14.     At all relevant times, Facility and Management Defendants provided management  
8 services to the Facility, which governed and controlled the nursing care and custodial services  
9 provided to Ms. Curtis, and by virtue of their management and control over the Facility, Facility  
10 and Management Defendants voluntarily and intentionally assumed responsibility for and  
11 provided supervisory services for the nursing care and custodial services provided to Ms. Curtis  
12 while she was a resident at the Facility.

13           15.     Facility and Management Defendants, through their managers, directors,  
14 presidents, vice-presidents, executive officers, and other agents, directly oversaw, managed,  
15 and/or controlled all aspects of the operation and management of the Facility, including budget,  
16 staffing, staff training, policy and procedures manual(s), licensing, accounts payable, accounts  
17 receivable, development and leasing, general accounting, cash management, pricing,  
18 reimbursement, capitalization, and profit and loss margins.

19           16.     Facility and Management Defendants, through their managers, directors,  
20 presidents, vice-presidents, executive officers, and other agents, created budgets, policies and  
21 procedures that the Facility's employees and agents were required to implement and follow.

22           17.     Facility and Management Defendants employed all of those persons who attended  
23 to and provided care and basic needs to Ms. Curtis while she was a resident at Facility, and  
24 employed those persons in management and supervisory positions who directed the operations of  
25 Facility, all of whom were acting within the course and scope of their employment, during Ms.  
26 Curtis's residency.

27           18.     Facility and Management Defendants, through their administrators, directors and  
28 managing agents, condoned and ratified all conduct of the Facility alleged herein.

1            19. At all relevant times, Defendants were the knowing agents and/or alter-egos of  
2 one another, inclusive, and Defendants’ officers, directors, and managing agents, directed,  
3 approved, and/or ratified the conduct of each of the other Defendants’ officers, agents and  
4 employees, and are therefore vicariously liable for the acts and/or omissions of their co-  
5 defendants, their agents and employees, as is more fully alleged herein. Moreover, at all relevant  
6 times, all Defendants were acting within the course and scope of their employment.

7            20. Defendants’ tortious acts and omissions, as alleged herein, were done in concert  
8 with each other and pursuant to a common design and agreement to accomplish a particular  
9 result: maximizing profits by operating Facility in such a manner that Facility was underfunded  
10 and understaffed. Moreover, Facility and Management Defendants aided and abetted each other  
11 in accomplishing the acts and omissions alleged herein.

12            21. Defendants, by their acts and omissions as alleged herein, operated pursuant to an  
13 agreement, with a common purpose and community of interest, with an equal right of control,  
14 and subject to participation in profits and losses, as further alleged herein, such that they  
15 operated a joint enterprise or joint venture, subjecting each of them to liability for the acts and  
16 omissions of each other.

17    **FACTUAL SUMMARY/PLAINTIFFS’ INJURIES**

18            22. On approximately March 2, 2016, Ms. Curtis was admitted as a resident to  
19 Facility for care and supervision. Defendants voluntarily assumed responsibility for her care and  
20 to provide her food, shelter, clothing, and services necessary to maintain her physical and mental  
21 health. Ms. Curtis remained a resident at Facility until March 8, 2016 — three days before her  
22 death.

23            23. Defendants knew that Ms. Curtis was in a compromised state: she had a history of  
24 dementia, hypertension, COPD, renal insufficiency, and had recently been hospitalized after  
25 being found on her bathroom floor on February 27, 2016.

26            24. As a result of Ms. Curtis’s condition, she required supervision, monitoring, and  
27 attention to ensure her health, safety and wellbeing.

28

1           25. Defendants knew that by virtue of her physical and mental state, Ms. Curtis was  
2 dependent upon staff for her safety, basic needs, and her activities of daily living.

3           26. Despite Defendants' knowledge and awareness of Ms. Curtis's needs, Defendants  
4 failed to provide her the attention and care necessary to prevent her from falling, and as a result  
5 Defendants permitted her to fall (causing her injuries) shortly after she entered Facility.

6           27. Despite Defendants' knowledge and awareness of Ms. Curtis's needs, on March  
7 7, 2016, Defendants caused Ms. Curtis to ingest a dose of morphine prescribed to another  
8 resident. Ms. Curtis was not prescribed morphine.

9           28. Despite Defendants' notice and knowledge that they had wrongly given morphine  
10 to Ms. Curtis, they failed to act timely upon that discovery, instead retaining Ms. Curtis as a  
11 resident until March 8, 2016.

12           29. Ms. Curtis was transported to Sunrise Hospital where she was diagnosed with  
13 anoxic brain encephalopathy. She was later transferred to Nathan Adelson Hospice on March 11,  
14 2016 and died shortly thereafter.

15           30. Ms. Curtis's death certificate records that her immediate cause of death was  
16 morphine intoxication.

17           31. Although the direct mechanism of Ms. Curtis's death was morphine intoxication,  
18 Defendants created, promoted and maintained a toxic and unsafe environment that predictably  
19 and inevitably led to and ultimately caused Ms. Curtis's death.

20           32. Ms. Curtis's injuries were entirely preventable had Defendants simply provided  
21 the Facility with sufficient practices, sufficient supplies, and sufficient staff, in number and  
22 training, to provide Ms. Curtis with the amount of supervision and care that the laws and  
23 regulations required.

24           33. Ms. Curtis's injuries, including death, would not have occurred but for the  
25 complete willful disregard by Defendants of their duties owed to her.

26           34. Ms. Curtis was subjected to pain and suffering and ultimately died as a result of the  
27 toxic and unsafe environment created, promoted and maintained by Defendants.  
28

1           35.     Accordingly, Defendants may be held directly, as well as vicariously, liable for  
2 the injuries and death of Ms. Curtis.

3                     **DEFENDANTS' KNOWLEDGE, DUTIES, AND WRONGFUL CONDUCT**

4           36.     During Ms. Curtis's residency at Facility, Defendants knew or had reason to know  
5 that she was an older person under N.R.S. § 41.1395 and that she was incapable of independently  
6 providing for all of her daily and personal needs without reliable assistance.

7           37.     At all relevant times, Defendants held themselves and the Facility out as being  
8 competent and qualified to provide adequate services, including custodial care services, to their  
9 residents, including Ms. Curtis.

10          38.     Defendants assumed responsibility for Ms. Curtis's total care, including the  
11 provisions of activities of daily living, nutrition, skilled nursing, rehabilitation, and ordinary  
12 custodial services.

13          39.     Because Defendants were in the business of providing long-term care as a skilled  
14 nursing facility, Defendants were subject to the requirements of all corresponding statutes and  
15 regulations governing the operation of a skilled nursing facility.

16          40.     At all times mentioned herein, Defendants owed a duty to Ms. Curtis to provide  
17 services and care for her in such a manner and in such an environment as to attain or maintain  
18 the highest practicable physical, mental, and psychosocial well-being of Ms. Curtis.

19          41.     At all times mentioned herein, Defendants had an obligation to establish practices  
20 that addressed the needs of the residents of the Facility, including Ms. Curtis, with respect to the  
21 care and services which were necessary to maintain the physical and mental health of residents.

22          42.     At all times mentioned herein, Defendants had a duty to employ sufficient staff to  
23 provide services to attain or maintain the highest practicable physical and mental well-being of  
24 Ms. Curtis.

25          43.     At all times mentioned herein, Defendants had an obligation to maintain and  
26 manage the Facility with adequate staff and sufficient resources to ensure timely care and  
27 services which were necessary to maintain the physical and mental health of residents, such Ms.  
28 Curtis.

1           44.     At all times mentioned herein, Defendants had a duty to provide for the safety of  
2 residents, including Ms. Curtis, particularly residents who were impaired and in need of special  
3 precautions for their safety, by providing each resident, including Ms. Curtis, with adequate  
4 supervision, assistance, and intervention to prevent injury or deterioration of their health.

5           45.     As Administrators for Facility, Administrator Defendants' duties included (a)  
6 appointing and supervising a medical director to be responsible for resident medical care at  
7 Facility; (b) appointing and supervising a Director of Nursing for Facility; (c) supervising and  
8 evaluating staff performance at Facility; and (d) developing and implementing written policies  
9 and procedures for nursing services, personnel, staff orientation and in-service training,  
10 admission and discharge of residents, safety and emergency plans, and quality management plans  
11 for Facility.

12           46.     Despite their obligations and duties, Defendants made a conscious decision to  
13 operate and/or manage the Facility so as to maximize profits at the expense of the care required  
14 to be provided to their residents, including Ms. Curtis.

15           47.     In their efforts to maximize profits, Defendants negligently, intentionally and/or  
16 recklessly mismanaged and/or reduced staffing levels below the level necessary to provide  
17 adequate care to the residents and implemented practices in disregard to the safety of the  
18 residents.

19           48.     Despite their knowledge of the likelihood of harm due to insufficient staffing  
20 levels, and despite complaints from staff members about insufficient staffing levels, Defendants  
21 intentionally, recklessly and/or negligently disregarded the consequences of their actions, and  
22 caused staffing levels at the Facility to be set at a level such that the personnel on duty could not  
23 and did not meet the needs of the Facility's residents, including Ms. Curtis.

24           49.     Despite their knowledge of the likelihood of harm due to inadequate practices,  
25 Defendants intentionally, recklessly and/or negligently disregarded the consequences of their  
26 actions, and prevented personnel on duty to meet the needs of the Facility's residents, including  
27 Ms. Curtis.

28



1           50.     In an effort to increase profits and at the direction of the Management Defendants,  
2 Defendants intentionally increased and attempted to improperly retain the number of high-level  
3 acuity residents that required more complex care and services.

4           51.     Defendants knew that this increase in the acuity care levels of the resident  
5 population would substantially increase the need for staff, services, and supplies necessary for  
6 the resident population.

7           52.     However, in an effort to increase profits and at the direction of the Management  
8 Defendants, Defendants failed to provide the resources necessary, including sufficient staff, to  
9 meet the needs of the residents, including Ms. Curtis.

10          53.     Defendants knowingly disregarded patient acuity levels while making staffing  
11 decisions, and also knowingly disregarded the minimum time required by the staff to perform  
12 essential day-to-day functions and services.

13          54.     The acts and omissions of Defendants were motivated by a desire to increase the  
14 profits of the nursing homes they own, including the Facility, by knowingly, recklessly, and with  
15 total disregard for the health and safety of the residents, reducing expenditures for needed  
16 staffing, training, supervision, and care to levels that would inevitably lead to severe injuries,  
17 such as those suffered by Ms. Curtis.

18          55.     Defendants ratified the conduct of each Defendant in that they mandated, were  
19 aware of, and/or accepted chronic understaffing, inadequate training, inadequate supplies and  
20 inadequate practices at the Facility, were aware of the Facility's customary practice of receiving  
21 complaints and notices of deficiencies relating to the care of residents, and were aware that such  
22 understaffing, inadequate training, and deficiencies led to injury and death to residents.

23          56.     The aforementioned acts directly caused injury to Ms. Curtis and were known by  
24 Defendants.

25          57.     Defendants knowingly sacrificed the quality of services received by all residents,  
26 including Ms. Curtis, by failing to manage, care, monitor, document, chart, prevent and/or treat  
27 the injuries suffered by Ms. Curtis, which included falls, intoxication, unnecessary pain and  
28 suffering, and, ultimately, an untimely death.

1           58.     Ms. Curtis’s injuries, as alleged herein, would not have occurred but for the utter  
2 and complete willful disregard by Defendants of their duties to Ms. Curtis.

3           59.     Defendants allowed Ms. Curtis to suffer in a hazardous environment, and she was  
4 therefore forced to suffer poor quality of life.

5                   **FIRST CAUSE OF ACTION – ABUSE/NEGLECT OF AN OLDER PERSON**

6                   **(Abuse/Neglect of an older person by the Estate of Mary Curtis against all Defendants)**

7           60.     Plaintiffs hereby incorporate the allegations in all the foregoing paragraphs as  
8 though set forth at length herein.

9           61.     Mary Curtis was born on 19 December 1926 and was therefore an “older person”  
10 under N.R.S. § 41.1395.

11           62.     On approximately 2 March 2016, Ms. Curtis was admitted to Life Care Center of  
12 South Las Vegas f/k/a Life Care Center of Paradise Valley, a nursing home, for care and  
13 supervision. Defendants voluntarily assumed responsibility for her care and to provide her food,  
14 shelter, clothing, and services necessary to maintain her physical and mental health.

15           63.     Upon entering Life Care Center of South Las Vegas f/k/a Life Care Center of  
16 Paradise Valley, Ms. Curtis’s past medical history included dementia, hypertension, COPD, and  
17 renal insufficiency. She had been hospitalized after being found on her bathroom floor on 27  
18 February 2016; during her hospitalization, it was determined that she would not be able to return  
19 to her previous living situation and so following her hospital course, she was transferred to Life  
20 Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley for continuing  
21 subacute and memory care.

22           64.     During her residency at Life Care Center of South Las Vegas f/k/a Life Care  
23 Center of Paradise Valley, Ms. Curtis was dependent on staff for her basic needs and her  
24 activities of daily living.

25           65.     Defendants knew that Ms. Curtis relied on them for her basic needs and that  
26 without assistance from them she would be susceptible to injury and death.

27           66.     Despite Defendants’ notice and knowledge that Ms. Curtis was dependent on  
28 them to provide sufficient and adequate staff to provide her with her basic needs, Defendants

1 failed to provide sufficient and adequate staff to properly and safely provide her with her basic  
2 needs and caused her injuries and death.

3 67. Despite Defendants' notice and knowledge of Ms. Curtis's fall risk they permitted  
4 her to fall (causing her injuries) shortly after she entered Life Care Center of South Las Vegas  
5 f/k/a Life Care Center of Paradise Valley.

6 68. Despite Defendants' notice and knowledge that Ms. Curtis was dependent on  
7 them for proper medication administration, on 7 March 2016, Defendants caused Ms. Curtis to  
8 ingest a dose of morphine prescribed to another resident. Ms. Curtis was not prescribed  
9 morphine.

10 69. Despite Defendants' notice and knowledge that they had wrongly given morphine  
11 to Ms. Curtis, they failed to act timely upon that discovery, instead retaining Ms. Curtis as a  
12 resident until 8 March 2016.

13 70. Defendants eventually called 911 and emergency personnel transported Ms.  
14 Curtis to Sunrise Hospital, where she was diagnosed with anoxic brain encephalopathy. She was  
15 later transferred to Nathan Adelson Hospice on 11 March 2016 and died shortly thereafter.

16 71. Ms. Curtis's death certificate records that her immediate cause of death was  
17 morphine intoxication.

18 72. Although the direct mechanism of Ms. Curtis's death was morphine intoxication,  
19 Defendants created, promoted and maintained a toxic and unsafe environment that predictably  
20 and inevitably led to and ultimately caused Ms. Curtis's death.

21 73. Defendants may be held liable on various theories of liability including direct  
22 liability based on their conduct in creating, promoting and maintaining a toxic and unsafe  
23 environment for the residents, including Ms. Curtis.

24 74. Defendants may also be held liable as participants in the joint venture or  
25 enterprise. Specifically, Defendants, by their acts and omissions as alleged above, operated  
26 pursuant to an agreement, with a common purpose and community of interest, with an equal  
27 right of control, and subject to participation in profits and losses, as further alleged above, such  
28

1 that they operated a joint enterprise or joint venture, subjecting each of them to liability for the  
2 acts and omissions of each other.

3 75. Defendants may also be held vicariously liable for the acts that occurred during  
4 the agency relationship. Specifically, Defendants were the knowing agents of one another,  
5 inclusive, and Defendants' officers, directors, and managing agents, directed, approved, and/or  
6 ratified the conduct of each of the other Defendants' officers, agents and employees, and are  
7 therefore vicariously liable for the acts and/or omissions of their co-defendants and their agents,  
8 as is more fully alleged above.

9 76. Defendants may also be held vicariously liable for the acts that occurred during  
10 the employment relationship. Specifically, Defendants' officers, directors, and managing agents,  
11 directed, approved, and/or ratified the conduct of each of the other Defendants' employees, and  
12 are therefore vicariously liable for the acts and/or omissions of their employees, as is more fully  
13 alleged above. Moreover, at all relevant times, all Defendants were acting within the course and  
14 scope of their employment

15 77. Management Defendants may also be held liable under a theory of alter-ego as  
16 Facility Defendants were the knowing alter-egos of Management Defendants such that  
17 Management Defendants exercised substantial total control over the management and activities  
18 of Facility Defendants.

19 78. As a result of Defendants' failures and conscious disregard of Ms. Curtis's life,  
20 health, and safety, she suffered unjustified pain, injury, mental anguish, and death.

21 79. The actions of Defendants and each of them were abuse under N.R.S. §  
22 41.1395(4)(a) and neglect under N.R.S. § 41.1395(4)(c).

23 80. Defendants' failures were made in conscious disregard for Ms. Curtis's health and  
24 safety and they acted with recklessness, oppression, fraud, or malice in commission of their  
25 neglect or abuse of Ms. Curtis.

26 81. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal  
27 representative is entitled to recover double her actual damages under N.R.S. § 41.1395.  
28

1 82. As a direct and legal result of Ms. Curtis's injuries and death, her estate's personal  
2 representative is entitled to attorney fees and costs under N.R.S. § 41.1395.

3 83. Despite Defendants' notice and knowledge that Ms. Curtis was dependent on  
4 them for her basic needs and safety, they willfully and deliberately ignored and failed to avoid  
5 the substantial risk and probability that she would suffer injury and death, so that Plaintiff is  
6 entitled to punitive damages under N.R.S. § 42.001.

7 84. As a direct and proximate result of Defendants' willful negligence and intentional  
8 and unjustified conduct, Ms. Curtis suffered significant injuries and death. Defendants' conduct  
9 was a direct consequence of the motive and plans set forth herein, and Defendants are guilty of  
10 malice, oppression, recklessness, and fraud, justifying an award of punitive and exemplary  
11 damages.

## 12 SECOND CAUSE OF ACTION

### 13 **(Bad Faith Tort by the Estate of Mary Curtis against all Defendants)**

14 85. Plaintiffs re-allege and incorporate by reference the allegations in the foregoing  
15 paragraphs as though fully set forth herein.

16 86. A contract existed between Mary Curtis and Life Care Center of South Las Vegas  
17 f/k/a Life Care Center of Paradise Valley.

18 87. The contract, like every contract, had an implied covenant of good faith and fair  
19 dealing.

20 88. Mary Curtis's vulnerability and dependence on Defendants created a special  
21 relationship between her and Life Care Center of South Las Vegas f/k/a Life Care Center of  
22 Paradise Valley.

23 89. Mary Curtis's vulnerability and dependence on Defendants meant that she had a  
24 special reliance on Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise  
25 Valley.

26 90. Life Care Center of South Las Vegas f/k/a Life Care Center of Paradise Valley's  
27 betrayal of this relationship goes beyond the bounds of ordinary liability for breach of contract  
28 and results in tortious liability for its perfidy.

1 91. Defendants' perfidy constitutes malice, oppression, recklessness, and fraud,  
2 justifying an award of punitive and exemplary damages.

3 92. Wherefore, Plaintiffs pray for judgment against all Defendants and each of them  
4 as follows:

- 5 A. For compensatory damages in an amount in excess of \$10,000;
- 6 B. For special damages in an amount in excess of \$10,000;
- 7 C. For punitive damages in an amount in excess of \$10,000;
- 8 D. For reasonable attorney's fees and costs incurred herein;
- 9 E. For additional damages pursuant to NRS Chapter 41;
- 10 F. For pre-judgment and post judgment interest; and
- 11 G. For such other and further relief as the Court may deem just and proper in the  
12 premises.

13 DATED this 27<sup>th</sup> day of February, 2019.

14 **KOLESAR & LEATHAM**

15  
16 By /s/ Michael D. Davidson, Esq.  
MICHAEL D. DAVIDSON, ESQ.  
Nevada Bar No. 000878  
400 South Rampart Boulevard, Suite 400  
Las Vegas, Nevada 89145

17  
18 -and-

19  
20 MELANIE L. BOSSIE, ESQ. - *Pro Hac Vice*  
*Pending*  
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21  
22  
23 *Attorneys for Plaintiffs*  
24  
25  
26  
27  
28

**EXHIBIT 1**

**EXHIBIT 1**

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12 Facsimile: (602) 553-4557  
13 E-Mail: Melanie@wilkesmchugh.com

11 Attorneys for Plaintiffs

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

15 Estate of MARY CURTIS, deceased; LAURA  
16 LATRENTA, as Personal Representative of the  
17 Estate of MARY CURTIS; and LAURA  
18 LATRENTA, individually,

Plaintiffs,

vs.

19 SOUTH LAS VEGAS MEDICAL  
20 INVESTORS, LLC dba LIFE CARE CENTER  
21 OF SOUTH LAS VEGAS f/k/a LIFE CARE  
22 CENTER OF PARADISE VALLEY; SOUTH  
23 LAS VEGAS INVESTORS LIMITED  
24 PARTNERSHIP; LIFE CARE CENTERS OF  
25 AMERICA, INC.; CARL WAGNER,  
26 Administrator; and DOES 1-50, inclusive,

Defendants.

Case No.:

Dept. No.:

**AFFIDAVIT OF KATHLEEN HILL-  
O'NEILL, RN, DNP, MSN, NHA**

26 Plaintiffs Estate of Mary Curtis, deceased; Laura Latrenta, as Personal Representative of  
27 the Estate of Mary Curtis; and Laura Latrenta, individually, by and through their attorneys of  
28



1 record, Kolesar & Leatham and Wilkes & McHugh, P.A., hereby submit this Affidavit of Kathleen  
2 Hill-O'Neill, RN, DNP, MSN, NHA.

3 **AFFIDAVIT OF KATHLEEN HILL-O'NEILL, RN, DNP, MSN, NHA**

4 STATE OF PENNSYLVANIA

5 COUNTY OF BUCKS

6 1. I am a registered nurse licensed in the State of Pennsylvania. I am also certified as a Nursing  
7 Home Administrator and as a Gerontological Nurse Practitioner.

8 2. I earned my BS in nursing from Gwynedd Mercy College in 1987 and my MS in  
9 gerontological nurse clinician/practitioner studies from the University of Pennsylvania in 1989. I  
10 earned my certificate as a nursing home administrator in 1996 and received my doctor of nursing  
11 practice from the University of Arizona in 2017.

12 3. My curriculum vitae accurately reflects my education, training, and experience as a nurse,  
13 administrator, and nurse practitioner in the care and treatment of the elderly.

14 4. I have extensive training and experience in gerontological patient care. I am currently  
15 practicing as a gerontological nurse practitioner and as a nursing instructor. I also work as a  
16 consultant and provide consultation services to assess the quality of patient care in long-term care  
17 settings. I have worked as a consultant/federal monitor for the Office of the Inspector General,  
18 Department of Health and Human Services. In this role, I complete on-site visits and review  
19 records, policies, budgets, staffing, and statistics related to patient care. I have also worked for the  
20 U.S. Department of Justice. In addition, I am on the faculty of the University of Pennsylvania  
21 where I teach in the adult/gerontology nurse practitioner program.

22 5. I have extensive training in and experience in caring for residents in nursing homes and  
23 assisted living facilities. I also have experience supervising registered nurses, licensed practical  
24 nurses, certified nursing assistants, and unlicensed caregivers.

25 6. I have experience in reviewing medical records to determine whether the appropriate  
26 standards of care have been met and whether violations of the standard of care caused any injuries.

27 7. I am familiar with the prevailing standards of care required of nursing home facilities and  
28 by nurse practitioners in the care, treatment, and protection of vulnerable or older adults. In

1 addition, I am familiar with the statutes, rules, and regulations promulgated by the State of Nevada  
2 for the protection of individuals like Mary Curtis.

3 8. I have reviewed the following records as they pertain to Mary Curtis:

4 HealthSouth Rehabilitation Hospital of Henderson	01/21/16-02/06/16
5 Desert Springs Hospital	02/27/16-03/02/16
6 Life Care Center – Paradise Valley	03/02/16-03/08/16
7 Clark American Medical Response	03/08/16
8 Sunrise Medical Center	03/08/16-03/11/16 (DOD)
9 Nathan Adelson Hospice	03/11/16 (DOD)
10 Death Certificate	
11 Toxicology Report	
12 Clark County Medical Examiner’s Report	
13 03/09/16 – Three photos of Mary at Sunrise Medical Center	
14 Date unknown – Ten photos of Mary	

11 Videos of Ms. Curtis:

- 12 • 11/11/15
- 13 • 12/15/15 – talking about a hair cut
- 14 • 12/19/15 – on her birthday
- 15 • 02/06/16
- 16 • 02/16/16 – dancing
- 17 • 03/06/16 – Video of Mary after a fall at Life Care
- 18 • 03/06/16
- 19 • 03/07/16
- 20 • 03/08/16 – Video of Mary incoherent at Life Care
- 21 • 03/08/16
- 22 • 03/11/16 – Video of Mary waiting for hospice transfer

19 Discovery and Depositions:

20 Incident Report – 03/03/16  
21 Incident Report – 03/07/16  
22 Typed investigation by Director of Nursing  
23 Ersheila Dawson’s handwritten note re 03/07/16  
24 Medical Director Agreement with Dr. Saxena  
25 Letter re: Termination of Agreement between Dr. Saxena and Life Care  
26 Employee File: Ersheila Dawson  
27 Selected Medical Records from “Patient X”  
28 Federal DHS Survey of Life Care Center of South Las Vegas, 04/21/16  
Deposition of Laura Latrenta  
Deposition of Isabella Reyes, CNA  
Deposition of Cecilia Sansome, RN  
Deposition of Cherry Uy, CNA  
Deposition of Mariver Delloro, CNA  
Deposition of Weseret Werago, CNA  
Deposition of Thelma Olea, DON

- 1 Deposition of Jesus Alcantra, CNA
- 2 Deposition of Regina Ramos, LPN
- 3 Deposition of Jannel McCraney, CNA
- 4 Deposition of Theresa Piloto, CNA
- 5 Deposition of Adelita Stucker, CNA
- 6 Deposition of Eunice Muniz, caregiver
- 7 Deposition of Ileana Rebolledo Correa, caregiver
- 8 Deposition of Jesus Correa, caregiver
- 9 Deposition of Samir Saxena, MD
- 10 Deposition of Loretta Chatman, director of staff development
- 11 Deposition of Debra Johnson, LPN
- 12 Deposition of Tiffany Searcy, CNA
- 13 Deposition of Ersheila Dawson, LPN
- 14 Deposition of Annabelle Socaoco, NP
- 15 Ernie Tosh report and Excel spreadsheets
- 16 Life Care in-service documentation
- 17 Life Care selected punch detail reports
- 18 Life Care medication error reports
- 19 Life Care medication tracking log
- 20 Nevada Nurse Practice Act
- 21 Code of Federal Regulations, Title 42, Part 483, Subpart B
- 22 Nevada skilled nursing regulations
- 23 NRS 41.1395
- 24 NRS 200.5092

16 9. Based on my review of Ms. Curtis’s medical records and the documents listed above, as  
17 well as on my education, training, and experience as a nurse practitioner, it is my opinion, within  
18 a reasonable degree of probability, that the acts, errors, and omissions of Life Care staff; of Life  
19 Care Center of South Las Vegas (LCCPV); of LCCPV’s administrator; and of the Life Care  
20 corporate Defendants (South Las Vegas Investors Limited Partnership and Life Care Centers of  
21 America, Inc.) violated minimum standards of care, constituted an egregious indifference to Ms.  
22 Curtis’s rights, safety, and wellbeing, caused her preventable injuries, pain, and suffering, and  
23 ultimately contributed to her death.

24 10. Mary Curtis, an 89-year-old widow with a past medical history of dementia, hypertension,  
25 COPD, and renal insufficiency, entered Life Care Center of South Las Vegas on 2 March 2016 for  
26 post-hospitalization continuing care.

27 11. Ms. Curtis, who had not been prescribed morphine, was given another resident’s prescribed  
28 morphine on 7 March 2016.

1 12. Ms. Curtis was thereafter given two doses of Narcan in an effort to reverse the morphine's  
2 effects.

3 13. On the morning of 8 March 2016, Ms. Curtis was found in an altered mental state with low  
4 blood oxygen saturation. Emergency medical services transported her to Sunrise Hospital, where  
5 she was diagnosed with anoxic brain encephalopathy.

6 14. Ms. Curtis was transferred to Nathan Adelson Hospice on 11 March 2016 and died shortly  
7 thereafter. Her death certificate records that her immediate cause of death was morphine  
8 intoxication.

9 15. The standard of care and 42 C.F.R. § 483.25(d)(2) require that a facility ensure that each  
10 resident receives adequate supervision and assistance devices to prevent accidents. Yet LCCPV  
11 and its staff, although documenting Mary's risk factors, failed to recognize her risk of falling and  
12 to put measures in place to prevent her from falling, and so she fell on 3 and 6 March 2016 (the  
13 latter of which falls LCCPV and its staff failed to even document). The failure of LCCPV and its  
14 staff to ensure that Mary received adequate supervision and assistance devices to prevent her falls  
15 breached their duty and fell below the standard of care.

16 16. The standard of care and 42 C.F.R. § 483.45(f)(2) require that a facility ensure that  
17 residents are free of any significant medication errors. Yet only five days after her admission Mary  
18 was given a high dose of a narcotic pain medication that was ordered not for her but for another  
19 resident. LCCPV and its staff then failed to provide appropriate care and treatment following that  
20 significant medication error although morphine is a strong narcotic pain medication with  
21 significant side effects including respiration depression. The failure of LCCPV and its staff to  
22 ensure that Mary was free of significant medication errors breached their duty and fell below the  
23 standard of care.

24 17. The standard of care and 42 C.F.R. § 483.20 require that a facility conduct assessments of  
25 each resident's functional capacity. Yet LCCPV and its staff failed to complete adequate and  
26 appropriate assessments of Mary after she was given morphine and failed to communicate those  
27 assessments from shift to shift. The failure of LCCPV and its staff to assess Mary breached their  
28 duty and fell below the standard of care.

1 18. The standard of care and 42 C.F.R. § 483.21(b) require that a facility develop and  
2 implement a person-centered care plan for each resident describing the services to be furnished to  
3 attain or maintain the resident's highest practical physical, mental, and psychosocial wellbeing.  
4 Yet Mary's fall prevention care plan was generic and not individualized to her, nor was it revised  
5 after her 3 March 2016 fall; moreover, she had no care plan to address the erroneous administration  
6 of morphine. The failure of LCCPV and its staff to develop and implement a person-centered care  
7 plan for Mary breached their duty and fell below the standard of care.

8 19. The standard of care requires that a facility adequately monitor a resident for a change in  
9 condition, timely recognize such a change, timely address it, and timely document it. And the  
10 standard of care and 42 C.F.R. § 483.10(g)(14)(i)(B) require that a facility consult with a resident's  
11 physician when there is a significant change in the resident's physical, mental, or psychosocial  
12 status. Yet LCCPV and its staff failed to maintain a clinical record accurately reflecting Mary's  
13 condition, failed to document timely notification of Mary's physician and family regarding the  
14 significant changes in her condition; and failed to accurately document her medication error and  
15 the related sequence of events. The failure of LCCPV and its staff to adequately monitor Mary,  
16 timely recognize and address her changes in condition, and timely document those changes  
17 breached their duty and fell below the standard of care.

18 20. The standard of care requires that if a serious medication error (such as giving a controlled  
19 narcotic to the wrong resident) occurs then a facility must ensure that all necessary staff members  
20 are made aware both of the incident and of the care and treatment to be given the resident thereafter.  
21 Yet LCCPV and its staff failed to ensure adequate and appropriate communication among staff.  
22 For example, they failed to update Mary's care plan and failed to inform oncoming staff and the  
23 physician regarding the morphine administration. The failure of LCCPV and its staff to ensure that  
24 necessary staff members were made aware of Mary's incident and of the care and treatment to be  
25 given her breached their duty and fell below the standard of care.

26 21. The corporate Defendants and LCCPV failed to provide administrative oversight,  
27 management, and patient care monitoring; and failed to ensure that all staff members were trained  
28 on the medication administration policy despite their knowledge of LCCPV's failures in

1 medication administration before Mary’s residency. The failure of the corporate Defendants and  
2 LCCPV to provide oversight, management, and monitoring; and to ensure that staff members were  
3 adequately trained, breached their duty and fell below the standard of care.

4 22. The standard of care and 42 C.F.R. § 483.35 requires that a facility have sufficient staff  
5 with the appropriate competencies and skills sets to provide nursing and related services to ensure  
6 resident safety and attain or maintain the highest practical physical, mental, and psychosocial  
7 wellbeing of each resident. Yet LCCPV was understaffed during Mary’s stay, and its insufficient  
8 staffing in number and qualification (for example, staffing was high in LPNs and limited in RNs)  
9 negatively affected Mary’s care. According to a staffing analysis, the corporate Defendants saved  
10 considerable money by understaffing LCCPV during and after Mary’s residency. The failure of  
11 the corporate Defendants and of LCCPV to ensure that LCCPV had sufficient staff to ensure  
12 Mary’s safety and maintain her wellbeing breached their duty and fell below the standard of care.

13 23. The standard of care and 42 C.F.R. § 483.24 require that a facility provide the necessary  
14 care and services to attain or maintain a resident’s highest practicable physical, mental, and  
15 psychosocial wellbeing consistent with her comprehensive assessment and plan of care. Yet all  
16 Life Care Defendants failed to ensure that Mary was provided that necessary care and services.  
17 Their failure breached their duty and fell below the standard of care.

18 24. All the opinions in this affidavit are expressed within a reasonable degree of probability  
19 and are based on my education, training, and experience, as well as on my review of the records  
20 and documents provided to me.

21 25. This affidavit is preliminary. It is not intended to and does not contain all the opinions that  
22 I have reached concerning Mary’s care and treatment at Life Care Center of South Las Vegas.

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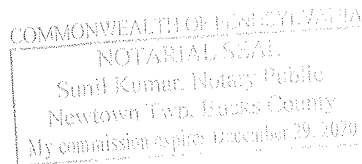
26. To my knowledge, no previous opinion rendered by me has been rejected by any court.

Kathleen Hill-O'Neill, RN, DNP, MSN, NHA

Sworn to and subscribed before me this <sup>th</sup> 26 day of February, 2019.

NOTARY PUBLIC, STATE OF PENNSYLVANIA

My commission expires: 12/29/2020



Personally known  OR produced identification

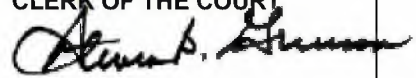
Type of identification produced: PA Driver Lic (20317543)

# EXHIBIT 2

(Notice of Entry of Order Granting Defendants' Motion to Dismiss filed on 07/15/2019)

# EXHIBIT 2





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7 Medical Investors LLC dba Life Care Center of  
South Las Vegas fka Life Care Center of Paradise  
8 Valley, South Las Vegas Investors, LP, Life Care  
Centers of America, Inc., Carl Wagner,*  
9

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 Estate of MARY CURTIS, deceased; LAURA  
13 LATRENTA, as Personal Representative of  
the Estate of MARY CURTIS; and LAURA  
14 LATRENTA, individually,

15 Plaintiffs,

16 vs.

17 SOUTH LAS VEGAS MEDICAL  
18 INVESTORS, LLC dba LIFE CARE  
CENTER OF SOUTH LAS VEGAS f/k/a  
19 LIFE CARE CENTER OF PARADISE  
VALLEY; SOUTH LAS VEGAS  
20 INVESTORS LIMITED PARTNERSHIP;  
LIFE CARE CENTERS OF AMERICA, INC.;  
21 CARL WAGNER, Administrator; and DOES  
1-50 inclusive,

22 Defendants.  
23

CASE NO. A-19-790152-C  
Dept. No.: VI

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANTS' MOTION  
TO DISMISS**

24 ///

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27 ///

28 ///

1 PLEASE TAKE NOTICE that the ORDER GRANTING DEFENDANTS' MOTION TO  
2 DISMISS was entered with the Court in the above-captioned matter on the 15<sup>th</sup> day of July 2019, a  
3 copy of which is attached hereto.

4 DATED this 15th day of July, 2019

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By /s/ S. Brent Vogel  
8 S. BRENT VOGEL  
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17 *South Las Vegas fka Life Care Center of Paradise*  
18 *Valley, South Las Vegas Investors, LP, Life Care*  
19 *Centers of America, Inc., Carl Wagner*  
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1 **CERTIFICATE OF SERVICE**

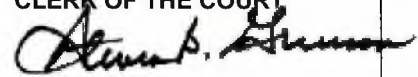
2 I hereby certify that on this 15th day of July, 2019, a true and correct copy of **NTOICE**  
3 **OF ENTRY OF ORDER GRANTING DEFENDANTS’ MOTION TO DISMISS** was served  
4 by electronically filing with the Clerk of the Court using the Wiznet Electronic Service system and  
5 serving all parties with an email-address on record, who have agreed to receive Electronic Service  
6 in this action.

7 Michael D. Davidson, Esq.  
8 Matthew T. Dushoff, Esq.  
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*Attorneys for Plaintiffs*

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19 By /s/ Johana Whitbeck  
20 an Employee of  
21 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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7 Medical Investors LLC dba Life Care Center of  
South Las Vegas fka Life Care Center of Paradise  
8 Valley, South Las Vegas Investors, LP, Life Care  
Centers of America, Inc., Carl Wagner,*

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 Estate of MARY CURTIS, deceased; LAURA  
LATRENTA, as Personal Representative of  
13 the Estate of MARY CURTIS; and LAURA  
LATRENTA, individually,

14 Plaintiffs,

15 vs.

16 SOUTH LAS VEGAS MEDICAL  
17 INVESTORS, LLC dba LIFE CARE  
CENTER OF SOUTH LAS VEGAS f/k/a  
18 LIFE CARE CENTER OF PARADISE  
VALLEY; SOUTH LAS VEGAS  
19 INVESTORS LIMITED PARTNERSHIP;  
LIFE CARE CENTERS OF AMERICA, INC.;  
20 CARL WAGNER, Administrator; and DOES  
1-50 inclusive,

21 Defendants.

CASE NO. A-19-790152-C  
Dept. No.: VI

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

**Hearing Date: June 4, 2019**  
**Hearing Time: 9:30 a.m.**

23 THIS MATTER, having come on for hearing the 4<sup>th</sup> day of June, 2019 on Defendants  
24 South Las Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care  
25 Center of Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and  
26 Carl Wagner's Motion to Dismiss, S. Brent Vogel, Esq., of the Law Firm Lewis Brisbois Bisgaard  
27 & Smith, LLP appearing on behalf of Defendants South Las Vegas Medical Investors LLC dba  
28

1 Life Care Center of South Las Vegas fka Life Care Center of Paradise Valley, South Las Vegas  
2 Investors, LP, Life Care Centers of America, Inc., and Carl Wagner (“Defendants”); and Melanie  
3 Bossie, Esq., of the Law Firm Bossie, Reilly & Oh, PC, and Michael Davidson, Esq., of the Law  
4 Firm Kolesar and Leatham, appearing on behalf of Plaintiffs Estate of Mary Curtis and Laura  
5 Latrenta, the Court, having considered the papers and pleadings in this matter and after hearing  
6 oral argument, and good cause appearing therefore, rules as follows:  
7

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that Defendants South Las  
9 Vegas Medical Investors LLC dba Life Care Center of South Las Vegas fka Life Care Center of  
10 Paradise Valley, South Las Vegas Investors, LP, Life Care Centers of America, Inc., and Carl  
11 Wagner’s Motion to Dismiss is hereby GRANTED.  
12


13 IT IS SO ORDERED.

14 DATED this <sup>5<sup>th</sup></sup> day of July, 2019.

15   
DISTRICT COURT JUDGE *BM*

16 Submitted by:

17 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

18   
19 By: \_\_\_\_\_  
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22 ERIN JORDAN, ESQ.  
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25 Las Vegas, Nevada 89118

26 *Attorneys for Defendants*

27 ///  
28 ///

1 Approved as to form and content by:

2

3 **KOLESAR & LEATHAM**

4

5 By: Refuse to sign

6 MICHAEL DAVIDSON, ESQ. (NV Bar No. 000878)  
7 400 South Rampart Boulevard, Suite 400  
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8 -and-

9 MELANIE L. BOSSIE, ESQ.  
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11 Bossie, Reilly & Oh, PC  
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13 Scottsdale, Arizona 85260

12 *Attorneys for Plaintiffs*

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