DIANE FRANKLIN, **Plaintiff,**

v. **ARBITRATION**

OSPREY/PANTOPS PLACE, LLC
Trading as COMMONWEALTH SENIOR LIVING AT CHARLOTTESVILLE

and

COMMONWEALTH ASSISTED LIVING, LLC, **Defendants.**

COMPLAINT

Comes now your plaintiff, Diane Franklin, by counsel, and moves for an award against the defendants, jointly and severally, based on the following:

1. That Diane Franklin (hereinafter "Ms. Franklin") was, at all times relevant hereto, a resident of the facility described herein, which was owned and/or operated by your defendants, beginning on or around May 18, 2015, and continuing until on or around December 13, 2015. Franklin has since moved, but remains a resident of Virginia, living in Charlottesville.
2. That Osprey/Pantops Place, LLC (hereinafter "Osprey/Pantops"), is a Delaware limited liability company and, on information and belief was and is the owner of the facility where Ms. Franklin resided as described herein. The facility operates under the fictitious name of Commonwealth Senior Living at Charlottesville (hereinafter "CSL").

3. That Commonwealth Assisted Living, LLC (hereinafter "CAL") is a Delaware limited liability company headquartered in Charlottesville, Virginia and which operates, manages and/or controls, through its employees, agents and servants, the facility owned by Osprey/Pantops at issue in this case, which is known as Commonwealth Senior Living at Charlottesville (hereinafter the "Community") which is located at 1550 Pantops Mountain Place, Charlottesville, Virginia 22911.
4. That at all times relevant hereto, CAL was the agent and servant of Osprey/Pantops.
5. That at all times relevant hereto, Osprey/Pantops was the agent of CAL.
6. Throughout the Complaint, the defendants are sometimes collectively also identified as "CAL/CSL."

BACKGROUND

7. Commonwealth Assisted Living was founded in 2002, providing care to elder residents and communities in Southeastern Virginia.
8. That CAL has capitalized on the growing need for elder care, and over the last 14 years, has expanded its business enterprise to contain more than 20 communities in Virginia alone, employing more than 1,200 employees, and providing care for greater than 1,500 residents.
9. That on information and belief, CAL establishes a limited liability company to own the actual facility, in this case Osprey/Pantops, but for all purposes, the facilities are managed and operated by Commonwealth Assisted Living.

10. In its marketing materials, CAL touts itself as being one of the largest providers of elder care in Virginia.

11. Part of CAL's business model includes the provision of independent living.

12. Independent living is a living arrangement whereby the resident lives in the equivalent of an apartment at the facility. The resident does not require daily healthcare, yet is allowed to participate in all of the facility activities, including, but not limited to, dining, transportation, activities, and other items which an independent person could enjoy.

13. This living arrangement is extremely attractive to a potential consumer and/or elderly person, and/or their families, to provide an independent feature for living prior to the necessity to having to advance the potential resident to a higher level of care, including an assisted living facility setting, a skilled nursing setting, or a memory care unit.

14. An independent setting allows elderly persons to maintain their independence which they have fought hard to maintain into their elder years. The setting also provides the added feature of safety and security which is not available in a typical residential apartment.

15. This business model is also extremely beneficial to CAL/CSL, and other similarly situated providers, in that independent living residents eventually require a greater degree of care which, routinely, the facilities are able to offer without the need of transition to a different facility. As such, an entry level independent level resident

may often remain at a facility until their eventual transfer to an acute level of care or hospice.

16. Because of the foregoing, independent living residents are marketed and are increasingly being sought by the industry as a gateway to additional business opportunities for the facility.

17. As CAL/CSL has claimed in this particular case, as a result of the independent living status, it is not subject to any statutory regulation, or control, and is, essentially legally positioned as no more than a residential landlord.

18. As a result, residents, including Ms. Franklin, occupying an "independent living" status, at the CAL/CSL at Charlottesville facility or, for that matter, any of CAL's other managed facilities where independent living is offered, do not (and Ms. Franklin did not) enjoy any statutory or regulatory protection even though, in this case, the independent living was part of the same assisted living facility, was not segregated from the assisted living facility, and utilized the exact same facilities as the assisted living section of the facility, which is regulated by statute, and regulated through the Virginia Department of Social Services.

19. To target and market consumers into their facility, CAL created marketing materials, both written and electronic, and other programs designed to place themselves as a leader in the elder care marketplace.

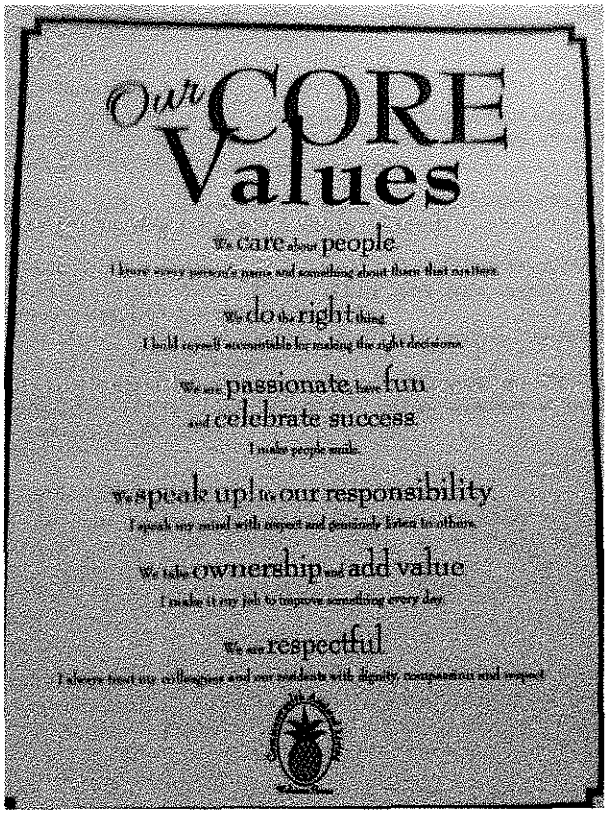
20. In the "About Us" section on a webpage, CAL touts that "Commonwealth is dedicated to providing high quality resident care in an efficient manner". "We have

implemented numerous programs that have resulted not only in enhanced resident care . . . .". "High standards of care are maintained with the support of strong training programs, showing our dedication to investing not only just in our buildings, but also in our teams".

21. CAL's Mission Statement claims that "CAL provides services with the respect and compassion our residents and their families expect and deserve".

22. CAL's website claims that CAL relies deeply upon its "Core Values" which serve as a reminder to CAL and provides a check and balance system that it hires the best people to achieve its goals.

23. The core values which it includes prominently in its marketing materials claims that:



24. In the "Operational Excellence" portion of its web marketing material, CAL claims that its management team is "highly talented" and has "experienced front line leaders".

25. In its marketing materials, CAL claims "that it continuously invests in the latest technology systems and procedures", including the use of operational software to manage its communities.

26. CAL further markets DOMO business intelligence software, connecting data across their entire organization, which allows quick visualization of data, identify best practices, all in real time.

27. CAL's technology webpage reflects that they utilize Healthsense, which is a "state of the art emergency response system throughout all of their communities". Several of CAL's communities have independent living.

28. CAL/CSL has visual testimonials on its website by employees and residents representing that a) the employees are always here 24/7 in the event of an emergency, b) everyone is so competent, so well done", and c) everyone's job here means something.

STATEMENT OF FACTS

29. The plaintiff hereby incorporates paragraphs 1 through 28.

30. Based on the foregoing marketing information, research, and independent knowledge, Diane Franklin, and her adult children, sought out CSL managed by CAL as an independent living facility suitable for Ms. Franklin's needs on or before May, 2015.

31. Ms. Franklin was familiar with the facility because she had previously resided at the same facility which, at that time, was owned by a predecessor.

32. Ms. Franklin's family, including specifically her daughter, researched the information and obtained information about the independent living arrangements, all of which was relayed to Ms. Franklin. Ms. Franklin additionally conducted her own investigation and research into the qualifications and the services to be provided by CAL/CSL.

33. At the time, and for all of her adult life, Ms. Franklin suffered from multiple sclerosis ("MS"), but, based on her diligence and dedication to exercise, was able to maintain her independence. Ms. Franklin had suffered numerous broken bones attributable to her MS, and the medicine which she had taken for years to treat the MS.

34. Ms. Franklin was always more concerned about the burden that she would place on her family by having to care for her, than her MS and her eventual death.

35. Ms. Franklin's daughter scheduled an appointment with CAL/CSL to inspect one unit. This unit was attractive to Ms. Franklin's daughter based on its amenities and proximity to other components of the facility, including the dining area and the front desk.

36. Ms. Franklin's daughter asked specifically CAL/CSL about additional levels of care that could be provided based on her mother's condition.

37. The sales representative then advised that CAL/CSL offered a Daily Check In Program (hereinafter the "the Program").

38. This feature and/or service had not been seen on previous marketing information, so Ms. Franklin's daughter made further specific inquiry into the program.

39. CAL/CSL's agent represented that a potential resident would call a phone number staffed by CAL/CSL daily by no later than 10:30, and, in the event the resident did not, the facility would first attempt to confirm the well-being of the resident by calling the resident's apartment, and, if efforts to contact the resident were unsuccessful, CAL/CSL would immediately send someone to the resident's apartment to check on the resident.

40. The CAL/CSL's agent further represented that the program was an additional way to ensure the safety of the resident on a daily basis.

41. The CAL/CSL agent then handed Ms. Franklin's daughter a residency agreement and the resident handbook which described the Program.

42. This particular service immediately became attractive to Ms. Franklin and her family.

43. Because Ms. Franklin already suffered from MS, it was essential to her, in addition to her family, that the Program would be maintained, and honored by CAL/CSL.

44. Based on the unit, the amenities, the representations as set forth herein made specifically by CAL/CSL through its sales representative, and in reliance on the CAL marketing information both investigated and obtained by Ms. Franklin on her own and shared with Ms. Franklin by her children, and in specific reliance of the additional added feature of the Program, Ms. Franklin and her family agreed to enter into a Residency Agreement with CSL, as managed by CAL.

45. On or around May 18, 2015, a CAL/CSL sales representative presented Ms. Franklin with an Independent Living Residency Agreement which is attached hereto as Exhibit A and incorporated herein by reference, (the "Residency Agreement").

46. The Residency Agreement referenced and attached as Exhibit B to the Residency Agreement, the Resident Handbook ("Resident Handbook") which contained the agreement of CAL/CSL under the Program.

47. The CAL/CSL facility had Ms. Franklin review and initial every page of both documents.

48. The Residency Handbook represents, among other things, the following:

> **Community Management**
>
> **Your residence is managed by Commonwealth Assisted Living (CAL), located in Charlottesville, Virginia. Our residences; success can be attributed to a commitment of operational excellence-an emphasis on value, quality, resident satisfaction, and the experience and dedication of key management personnel. All Commonwealth Assisted Living residences are designed with your comfort and satisfaction in mind. We reflect years of experience in, and dedication to, premier senior living. Our objective to provide unparalleled service is exemplified in our Core Values.**

49. The Residency Handbook also recites again CAL/CSL's core values previously described in paragraph 23.

50. The Resident Handbook then describes the Program which is set forth as follows:

> **Daily Check-In**
>
> **To ensure the well-being of all residents we ask that you call the Front Desk no later than 10:30 a.m. each day. In the event that you do not call we will**

call your apartment phone; if you do not answer an employee will then come to your apartment to ensure that you are okay and not in need of assistance.

51. Upon entry of the Residency Agreement, Ms. Franklin moved into the Community on or around May 18, 2015.

52. Contemporaneously, or before her move in date, CAL/CSL screened Ms. Franklin's medical conditions and approved her for independent living status based on CAL/CSL's internal guidelines.

53. Accordingly, CAL/CSL, by the time that the Residency Agreement and Resident Handbook agreement were entered, was aware of the specific dangers to which Ms. Franklin was exposed as a result of her pre-existing conditions and MS, particularly broken bones.

54. CAL/CSL and its agents, representatives and servants were also aware that Ms. Franklin's children were not capable, based on distance and employment, to visit Ms. Franklin on a regular basis.

55. Ms. Franklin was assigned room 111 in the Community and Ms. Franklin, with her family's assistance, moved into the facility and assumed daily independent living.

56. Ms. Franklin's room was approximately 60 feet from the front receptionist desk.

57. In reliance upon, and in compliance with the Program, Ms. Franklin routinely checked in with the front desk every day generally between 9:00 a.m. and 10:00 a.m.

58. Ms. Franklin became part of the Community and all of its regular benefits, including delivery of flyers regarding Community activities.

59. Ms. Franklin either ate in the dining facility, or ordered from the dining facility, daily unless she was out of the facility with a relative or friend.

60. Ms. Franklin, between her occupancy date in May 2015 and continuing through December 9, 2015, was able to bathe herself, cook for herself, ambulate throughout the facility with the use of a scooter, and otherwise enjoy her independence.

61. Ms. Franklin continued her pattern of complying with the Program and, as a result, her family had a high level of assurance that, in the event that they were unable to reach her in the event of an emergency, or that if she failed to contact CAL/CSL in compliance with the Program, CAL/CSL, its agents, servants and representatives would be there to facilitate the level of assistance that she required.

62. On the evening of December 9, 2015, Ms. Franklin was in her residence, in bed, watching television. She reached with her left hand across her body to place the television remote control on a bedside table at which time her left clavicle broke, and Ms. Franklin knew it was broken.

63. As a result of the broken clavicle, and the pain incident thereto, combined with her right sided weakness resulting from MS, Ms. Franklin was unable to remove herself from the bed.

64. There were no emergency alarms installed within her reach that would allow Ms. Franklin to activate an emergency alarm, and, as a result of her pain and clavicle fracture, she was unable to reach the telephone which was behind her and to the left.

65. Through the night of December 9th and the morning of December 10th, Ms. Franklin laid in her bed, in pain, but anticipating that the Program would produce and result in the discovery of her by approximately 10:30 on the morning of December 10th, when she failed to check in.

66. On the morning of December 10th, no agent, representative, or servant of CAL/CSL called to check upon Ms. Franklin, or came by her residence to check on her wellbeing, in accordance with the terms of the Program.

67. Throughout the day of December 10th, Ms. Franklin laid in her bed in pain, without food, water and medication, unable to move, drifting in and out of consciousness, due to pain and exhaustion.

68. That due to her inability to get to her MS medicine, which controlled muscle spasms, Ms. Franklin's right side began spasming, which triggered yet additional pain to the left clavicle as she laid there.

69. As of this point on December 10th, Ms. Franklin was totally helpless, without food, water, and laying in her own waste, including urine and feces.

70. Ms. Franklin continued to lay in her state of suffering, worried about her life, her family, and her death throughout the day of December 10th, the night of December 10th, and the morning hours of December 11th.

71. While CAL/CSL's servants, agents and employees carried on with their business, the receptionist's desk was no greater than approximately 60 feet from the front entrance of Ms. Franklin's unit.

72. Ms. Franklin used her energy to try to yell until she no longer had a voice, to no avail.

73. That at some point, Ms. Franklin was able to move her left leg off of the bed in a desperate attempt to get up, which ultimately proved unsuccessful.

74. That as a result of her attempt to get out of bed, however, she was so weak that she was unable to get her left leg back onto the bed, which left a portion of her lower left leg dangling off the side of the bed.

75. That Ms. Franklin could hear the phone ring and could hear the voice of the person calling through her answering machine, but she was unable to reach the phone. At no point, however, did she hear a voice from a CAL/CSL staff member.

76. That Ms. Franklin suffered all day through the day of December 11th.

77. At some point on December 11th, the fire alarm in the CAL/CSL facility was activated and continued for 23 minutes as Ms. Franklin stared at the clock.

78. While on one hand, Ms. Franklin was relieved that, finally, someone may come to her room to check on her, her initial thought of relief turned into desperation when she realized that no one was coming to get her, and that she might ultimately burn alive in her bed, in her own waste.

79. The concept of a fire was particularly sensitive to Ms. Franklin insofar as she had previously been a resident of the same facility (when it was operated as Jefferson Heights by different ownership) which in fact had a fire, requiring her evacuation by a fireman.

80. At no point through December 11th, did any CAL/CSL employee, servant, or agent check in with Ms. Franklin, or check up on Ms. Franklin as required by the Program.

81. At no point on December 12th, did any CAL/CSL employee, servant or agent check in, or check up on Ms. Franklin while she laid there in her bed, at this point, dehydrated, starved, and on the verge of organ failure.

82. At no point on December 13th, did any CAL/CSL employee, servant or agent check in, or check up on Ms. Franklin while she laid there in her bed, at this point, dehydrated, starved, and on the verge of organ failure

83. Ms. Franklin lamented and believed that she was going to be found dead, by her family, in humiliation, and in a pool of her own waste.

84. That on or around December 13th, her daughter placed a call to Ms. Franklin's residence to check in and to see if Ms. Franklin needed anything because she would be visiting that afternoon.

85. Her daughter received no response, but, knowing that the Program policy was in place, knew that if something had gone wrong, that CAL/CSL would have checked on her mother and coordinated the necessary response and that CAL/CSL would contact her.

86. Finally, not having heard from her mother, or received a return call, Ms. Franklin's daughter went to the facility on Sunday afternoon on December 13th. Immediately upon crossing the threshold from the lobby to the hallway, she could smell the stench of urine and feces. The hallway, which is a common corridor, begins within

approximately twenty feet from the receptionist's desk and extends approximately forty feet until the entrance of Ms. Franklin's apartment is reached.

87. Upon reaching the entry to Ms. Franklin's apartment, Ms. Franklin's daughter observed three CAL/CSL flyers partially extending into the hallway and in plain view of all who passed.

88. Upon entry of Ms. Franklin's apartment, Ms. Franklin's daughter was initially overwhelmed by the stench of urine and feces. She found her mother, barely alive, dehydrated, and still in pain.

89. That Ms. Franklin's daughter, who has specialized medical training and is currently licensed as a dentist and anesthesiologist, noticed that the blood in Ms. Franklin's extremities had mottled and Ms. Franklin had lost her color turning grayish, suggesting morbidity and lack of circulation.

90. When discovered, Ms. Franklin was laying in excrement, including feces which had dried on her outside and had dried internally, impacting her rectum and vagina.

91. Ms. Franklin had begun to develop bed sores as a result of lying in her own urine and feces for approximately four days.

92. That Ms. Franklin, being unable to move, was transported by ambulance to a regional hospital where emergency room technicians took approximately one hour just to clean the feces and other filth from Ms. Franklin's person so that she could be adequately treated.

93. While she was an in-patient, she was provided treatment to rehydrate and prevent the aggravation of bed sores, thereby incurring medical expenses.

94. While an in-patient in her incredibly weakened state, she had to be repeatedly handled as the result of her needed care for pressure sores, which also created severe and intense pain to her left clavicle area.

95. While Ms. Franklin was in the hospital, it was determined that she had developed breast cancer, which was at an advanced stage.

96. That due to her weakened condition as a result of the incident between December 9th and December 13th, Ms. Franklin did not believe that she could undergo a rigorous regimen for treatment of her cancer, and instead opted to be placed in another facility capable of rendering skilled nursing services.

97. That as opposed to enjoying her independence and an independent lifestyle, as she did on the morning and afternoon of December 9th, Ms. Franklin, since December 13th, has been bedridden, has had limited ability to get out of bed at all, and requires ongoing care of a sore acquired between December 9th and December 13th, and requires assistance for all functions of daily living.

98. As it turns out, despite CAL/CSL's representations, promises, marketing materials regarding the level and quality of service to be provided to Ms. Franklin, in addition to the state of the art technology utilized by CAL/CSL's agents, servants and representatives to ensure the safety its residents, including Ms. Franklin, the Program consisted of nothing more than a log book ("the Log Book")

99. The Log Book was maintained, generally, at the receptionist desk, although no particular person was specifically assigned with the duty of maintaining the Log Book.

100. The receptionists that worked at the facility during the period of December 9th through December 13th, received no specialized training on the maintenance of the Log Book, or the importance of the Program.

101. The receptionists who worked the reception desk between December 9th and December 13th were not adequately trained on specific actions to take in the event that a resident, like Ms. Franklin, did not check in by 10:30 a.m.

102. That there was no dedicated procedure in place which required a call to be made if a resident, like Ms. Franklin, failed to check in and, even if it turns out that there was, it was wholly ignored by staff and management.

103. That there was no back-up system or procedure in place by which redundancy and oversight was provided over the Log Book to ensure staff members complied with the Process.

104. Essentially, if a resident checked in, it might be documented. If, on the other hand, the resident failed to check in, the failure to check in was assigned little, if any, level of importance by the receptionist, or management.

105. In fact, the Log Books reflect that many of the Program entries were noted late in the afternoon, as late as 4:15 p.m., reflecting the fact that no follow up was conducted at all by 10:30 a.m. as required by the Program.

106. Additionally, these late entries are evident in the Log Book and were, or should have been, reviewed by management revealing failed compliance with the Program, on a regular basis.

107. That CAL/CSL management failed to take corrective action to ensure future and ongoing compliance with the Program.

108. That on information and belief, one receptionist on Thursday, December 10th, advised that she thought she saw Ms. Franklin in the lobby of the facility and wrote in 10:00 into Ms. Franklin's box which was inaccurate.

109. No entry in the Log Book was made at all on December 11th, which was an obvious trigger that CAL/CSL staff, including management, should have seen, but ignored.

110. There was also no mark on Ms. Franklin's box for Saturday, December 12th, confirming that the receptionist, CAL/CSL, and its managers and supervisors ignored the Log Book.

111. There was also no entry made on Sunday, December 13th, reflecting any check in or out by Ms. Franklin, and any degree of supervision over the process.

112. In furtherance, an analysis of the Log Book beginning on April 19th (Ms. Franklin moved in on 5/18) and continuing through December 26th , reveals the following:

(a) Out of 252 days, there were only 29 days when the Program deadline of 10:30 had been obtained for CAL/CSL residents, and on all 29 days, there were fewer than five residents that were participating in the program at the time.

(b) Only 198 days out of a total of 252 days showed that every resident was eventually checked in, even if after the deadline established by the policy.

(c) There is not a single week where all residents were checked in as required under the policy.

(d) The overall fail rate to meet 10:30 check in deadline was 35%.

(e) There were 10 days where the logs reflect that a resident went two or more days without a check documented, and without any explanation for the absence of the check in.

(f) That remarkably, this pattern continued after December 13, 2015, and through the time period for which the plaintiff currently has records.

113. That between December 9th and December 13th, mail and flyers had accumulated under Ms. Franklin's door and were visible and obvious in the hallway to any CAL/CSL employee or manager.

114. That between December 9th and December 13th, Ms Franklin had not appeared in the dining facility, or had not ordered food from the dining facility, despite the fact that the food services director knew that she relied daily upon the dining facility for all, or a portion, of her meals.

COUNT I – NEGLIGENCE

115. The plaintiff incorporates paragraphs 1 through 114.

116. That CAL/CSL, through their agents, servants and employees, undertook for consideration, an agreement designated as the Program to render services to Ms.

Franklin which CAL/CSL's agents, employees and servants knew was designed and was necessary for the protection of Ms. Franklin's person and all other CAL/CSL residents participating in Program.

117. That as a result of this undertaking by CAL/CSL, the parties established a special relationship which should have provided a right of protection to Ms. Franklin for her personal safety and health.

118. Based on that knowledge, CAL/CSL's agents, servants, employees and representatives assumed the duty of protecting Ms. Franklin from physical harm which could result from their failure to exercise reasonable care to perform the undertaking, including specifically, in this case, performance of the Program.

119. That CAL/CSL's agents, servants and employees, knew, or should have known, that their failure to exercise reasonable care to comply with their agreement increased the risk of physical harm and suffering to Ms. Franklin and all other CAL/CSL residents participating in Program.

120. Ms. Franklin relied upon CAL/CSL, its agents, servants and employees, upon their promise to check on her daily in accordance with the Program, and her reliance was the cornerstone of the relationship from its inception.

121. That employee S.H. and employee C.M. were receptionists, and, as such, were employees, agents, or servants of CAL/CSL and/or Commonwealth Senior Living at Charlottesville, and acting within their authority as employees, at all times relevant hereto and specifically between December 9, 2015 and December 13, 2015.

122. That S.H. and/or C.M., or a combination thereof, and in addition to other CAL/CSL supervisors, managers, employees, agents and servants, failed to comply with the Program which had been enacted and agreed upon by the parties to ensure the wellbeing of Ms. Franklin, and all other CAL/CSL residents participating in Program, by failing to call, check in, or send another staff member to check in on Ms. Franklin between December 9, 2015 and December 13, 2015.

123. That the conduct, and the failure of the employees, managers, servants and agents of the defendants to comply with the Program and to check on her well-being was negligent, breaching the duty assumed by the defendants.

124. That as a direct and proximate result of CAL/CSL's agents, employees and servants' failure to check in on Ms. Franklin as required by the Program, and under the doctrine of respondeat superior, Ms. Franklin suffered great pain of body and mind by laying, with a broken clavicle in her bed, unable to move, eat, drink, access medication and in her own excrement for four days, fearing death, and starvation; suffered humiliation, embarrassment, and inconvenience, both in the four days she was left unattended, in addition to her period of treatment, has incurred and will continue to incur medical expenses related to the defendants' conduct, and has suffered other damage.

WHEREFORE, under Count I, your plaintiff demands the sum of Four Million Dollars ($4,000,000.00), with interest from December 9, 2015, for its costs incurred, and for such other relief as may be appropriate.

COUNT II – NEGLIGENCE

125. The plaintiff incorporates paragraphs 1 through 124.

126. That the conduct of the CAL/CSL, was further negligent and in violation of their assumed duty by:

(a) Failing to provide adequate training to its staff on the importance of the Program.

(b) Failing to provide training to its staff on the proper maintenance and procedures to be utilized to ensure the safety of residents in the Program.

(c) Failing to provide oversight of the Program.

(d) Failing to provide an adequate method and/or system to ensure the well-being of its residents.

(e) Failing to clearly delineate employee responsibility for various aspect of the Program.

(f) Allowing improperly trained staff members to control the Program.

127. That as a direct and proximate result of CAL/CSL's negligence, Ms. Franklin suffered great pain of body and mind by laying, with a broken clavicle in her bed, unable to move, eat, drink, access medication and in her own excrement for four days, fearing death, and starvation; suffered humiliation, embarrassment, and inconvenience, both in the four days she was left unattended, in addition to her period of treatment, has incurred and will continue to incur medical expenses related to the defendants' conduct

WHEREFORE, under Count II, your plaintiff demands the sum of Four Million Dollars ($4,000,000.00), with interest from December 9, 2015, for its costs incurred, and for such other relief as may be appropriate.

COUNT III – PUNITIVE DAMAGES

128. The plaintiff incorporates paragraphs 1 through 127.

129. That CAL/CSL, its managers and supervisors participated and engaged in the willful and wanton disregard for the rights of Ms. Franklin insofar as CAL/CSL, its managers, and supervisors (1) failed to train the staff in any regard with respect to the Program, (2) failed to instill or stress the importance of the reliability of the Program for purposes of safety and health of the residence, (3) failed to establish any protocols or procedures designed to ensure the accuracy and reliability of the Log Book, (4) failed to put in place a Log Book with resulting procedures that meets the minimum standard required for a log book intended to protect safety and health, (5) failed to monitor its employees in their processes and work activity related to the Log Book, (6) failed to conduct reviews of their processes or reliability of the Log Book as the demand for independent living residents increased, (7) failed to provide training materials to their employees, not only at the front desk , but to other employees that could have observed the problem in this case, including but not limited to, the flyer delivery person, in addition to the food service representative, (8) failed to disavow or repudiate their conduct by continuing to allow the same failed conduct under the policy, even after Ms. Franklin's incident.

130. That the conduct on behalf of CAL/CSL, its agents, servants and employees was willful and wanton in that it disregarded Ms. Franklin's rights.

131. That CAL/CSL, its agents, servants and employees knew that Ms. Franklin, while maintaining an independent living status, was relying on CAL/CSL and its procedures and protocols and service to protect her wellbeing.

132. That Ms. Franklin's medical condition and likelihood of broken bones or complications was further known to the defendants from the beginning of the lease.

133. That CAL/CSL, by placing Ms. Franklin in the Program with the knowledge of her medical conditions, acknowledged its understanding that it was responsible Ms. Franklin's wellbeing, safety and security.

134. That as a result of the foregoing, CAL/CSL knew that their failure to comply with the procedures it represented would be reliable, and which were put in place for Ms. Franklin's protection, would probably result in injury if those procedures were not followed.

135. That potential injury would be evident, probably and/or likely, because the failure of Ms. Franklin to check in would have, and should have, triggered notice to CAL/CSL that Ms. Franklin was in inherent danger and in an emergent situation.

136. That punitive damages are appropriate and necessary to provide an example and warning to deter others, including CAL/CSL, from allowing the same deficient policies and procedures to control a vital service which is, essentially, a service

intended to protect the life and health of residents, and not just a perfunctory ministerial service.

137. That CAL/CSL and its related entities held themselves out as one of the largest suppliers of this type of elder care in the Commonwealth of Virginia.

138. That the entire conduct of the defendant evidences such recklessness to establish a conscious disregard for Ms. Franklin in this case.

139. That residents and families like Ms. Franklin's, need protection insofar as according to the defendants, they operate in an unregulated marketplace with no procedures, whether regulatory or statute, that control their care over residents in an independent living setting.

WHEREFORE, under this count, your plaintiff demands punitive damages in the amount of $350,000, with interest from December 9, 2015, and its costs incurred.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

140. The plaintiff incorporates paragraphs 1 through 139.

141. That CAL/CSL, its agents, servants and employees, by failing to protect her and allow her to remain unattended, intentionally inflicted severe emotional distress upon Ms. Franklin for four days, and which is ongoing, including, but not limited to, anxiety, depression, trauma and shock.

142. That as a direct and proximate result of the defendants' intentional infliction of emotional distress, Ms. Franklin suffered physical and mental injury caused by the failure to attend to her needs as agreed.

WHEREFORE, under Count IV, your plaintiff demands the sum of Four Million Dollars ($4,000,000.00), interest from December 10, 2015, its costs incurred, and all such other relief as may be appropriate.

COUNT V – VIRGINIA CONSUMER PROTECTION ACT

143. The plaintiff incorporates paragraphs 1 through 142.

144. Ms. Franklin, at all times relevant hereto, is and was a person as defined by Virginia Code Section 59.1-198.

145. That at all times relevant hereto, CAL/CSL was a supplier within the definition of Virginia Code Section 59.1-198, and is a seller who engages in consumer transactions.

146. That CAL/CSL advertised and sold services which would be used primarily for the protection of Ms. Franklin, for her personal family and household purposes, within the definition of a consumer transaction as defined by Virginia Code Section 59.1-198.

147. That the services sold include, but are not limited to, the provision of care to Ms. Franklin as represented by the various marketing materials and other materials in which the defendants made specific representations regarding their suitability to care for Ms. Franklin, the exceptional quality and excellence of their care, the excellence and highly skilled training of their staff and management, in addition to the specific provision of services under the Program.

148. That in violation of Virginia Code Section 59.1-200, and based on the preceding paragraphs, and incorporated paragraphs, CAL/CSL misrepresented that their services had certain characteristics and benefits.

149. That pursuant to Virginia Code Section 59.1-200, and based on the preceding paragraphs and incorporated paragraphs, CAL/CSL misrepresented that their services were of a particular standard of quality, grade, style, or model.

150. That in violation of Virginia Code Section 59.1-200, CAL/CSL used false promises, and misrepresented that it could comply with the terms of its contract as part of a consumer transaction.

151. Contrary to their representations, the Program was (1) inadequately conceived and implemented from the beginning, (2) utilized inadequate procedures, (3) failed to include training protocols and procedures, or safeguards to ensure compliance with the Program (4) had no meaningful back up system or oversight by management to ensure compliance with the program, (5) and as evidenced by the tracking history of the Log Book, was generally ignored, with little significance on the level of attention required to ensure the safety of residents, including Ms. Franklin.

152. CAL/CSL's overall conduct evidences the fact that it really had no intent to comply with its general representations on quality of service, and its specific representation that it would ensure Ms. Franklin's well-being by checking in on her daily.

153. As such, CAL/CSL's misrepresentations were false promises, and false representations which were willful and willfully disregarded the protection that Ms. Franklin should have been afforded as a person and a consumer.

154. That as a direct and proximate result of the defendants' willful violations of Ms. Franklin's consumer rights, pursuant to Virginia Consumer Protection Act, Ms. Franklin has suffered actual damage and attorney's fees incurred.

155. That Ms. Franklin's actual damages include her medical expenses incident to treatment, her humiliation, inconvenience, and tremendous pain and suffering of body and mind.

WHEREFORE, pursuant to Virginia Code Section 59.1-204, your plaintiff demands an award of actual damages in the amount of Four Million Dollars ($4,00,000.00); that pursuant to Virginia Code Section 59.1-204(A), that the actual damage figure be tripled; that pursuant to Virginia Code Section 59.1-204(B), that the plaintiff be awarded all of her reasonable attorney's fees and court costs incurred, and for all such other relief as may be appropriate.

COUNT VI – BREACH OF CONTRACT

156. The plaintiff incorporates paragraphs 1 through 155.

157. Ms. Franklin entered a lease arrangement with CAL/CSL requiring that, in the event that Ms. Franklin did not place a telephone call to the Front Desk each day by 10:30 a.m., that a CAL or CSL employee would call Ms. Franklin's apartment and, if there was no answer, send an employee to Ms. Franklin's apartment to make sure she was okay.

158. On December 10, 2015, Ms. Franklin failed to call into the front desk by 10:30 a.m.

159. On December 10, 2015, no employee of CAL or CSL called Ms. Franklin's apartment to check on her.

160. On December 10, 2015, no employee of CAL or CSL either went to, or asked another employee, to go to Ms. Franklin's apartment and check on her.

161. On December 11, 2015, Ms. Franklin failed to call into the front desk by 10:30 a.m.

162. On December 11, 2015, no employee of CAL or CSL called Ms. Franklin's apartment to check on her.

163. On December 11, 2015, no employee of CAL or CSL either went to, or asked another employee, to go to Ms. Franklin's apartment to check on her.

164. On December 12, 2015, Ms. Franklin failed to call into the front desk by 10:30 a.m.

165. On December 12, 2015, no employee of CAL or CSL called Ms. Franklin's apartment to check on her.

166. On December 12, 2015, no employee of CAL or CSL either went to, or asked another employee, to go to Ms. Franklin's apartment to check on her.

167. On December 13, 2015, Ms. Franklin failed to call into the front desk by 10:30 a.m.

168. On December 13, 2015, no employee of CAL or CSL called Ms. Franklin's apartment to check on her.

169. On December 13, 2015, no employee of CAL or CSL either went to, or asked another employee, to go to Ms. Franklin's apartment to check on her.

170. Based on these failures, CAL/CSL breached their contractual obligations under the lease.

171. As a direct and proximate result of the numerous breaches, Ms. Franklin has suffered damage in an amount to be established at the hearing of this matter.

WHEREFORE, under Count VI, your plaintiff demands the sum of Four Million Dollars ($4,000,000.00), interest from December 10, 2015, its costs incurred, and all such other relief as may be appropriate.

DIANE FRANKLIN

By: _____
Counsel

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