

STATE OF NORTH CAROLINA

ROWAN

County **FILED**

File No.

20CVS 705

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1

Marjorie Fuller Garvin
c/o Wallace and Graham, PA
525 N Main Street
Salisbury

2020 APR 21 P 1: 22

ROWAN CO., N.C.

GENERAL

CIVIL ACTION COVER SHEET

☒ INITIAL FILING ☐ SUBSEQUENT FILING

Name And Address Of Plaintiff 2

Karen Craig Owen
c/o Wallace and Graham, PA
525 N Main Street
Salisbury

BY N
NC 28144

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Defendant 1

Accordius Health, LLC
c/o Registered Agent
15720 Brixham Hill Ave. # 300
Charlotte, NC 28277

Name And Address Of Attorney Or Party, If Not Represented
(complete for initial appearance or change of address)

Mona Lisa Wallace, Whitney W. Williams
Wallace and Graham, PA
525 N Main Street
Salisbury NC 28144

Summons Submitted

☒ Yes ☐ No

Telephone No.

704-633-5244

Cellular Telephone No.

NC Attorney Bar No.

9021;38574

Attorney Email Address

mwallace@wallacegraham.com

☒ Initial Appearance in Case ☐ Change of Address

Name And Address Of Defendant 2

Accordius Health at Salisbury d/b/a Citadel-Salisbury
c/o Registered Agent
15720 Brixham Hill Ave #300
Charlotte, NC 28277

Name Of Firm

Wallace and Graham, PA

Fax No.

704-633-9434

Summons Submitted

☐ Yes ☐ No

Counsel For

☒ All Plaintiffs ☐ All Defendants ☐ Only: (list party(ies) represented)

☒ Jury Demanded In Pleading ☐ Complex Litigation ☐ Stipulate to Arbitration

TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND)
- ☐ Amended Answer/Reply (AMND-Response)
- ☐ Amended Complaint (AMND)
- ☐ Assess Costs (COST)
- ☐ Answer/Reply (ANSW-Response) (see Note)
- ☐ Change Venue (CHVN)
- ☒ Complaint (COMP)
- ☐ Confession Of Judgment (CNFJ)
- ☐ Consent Order (CONS)
- ☐ Consolidate (CNSL)
- ☐ Contempt (CNTP)
- ☐ Continue (CNTN)
- ☐ Compel (CMPL)
- ☐ Counterclaim (CTCL) Assess Court Costs
- ☐ Crossclaim (list on back) (CRSS) Assess Court Costs
- ☐ Dismiss (DISM) Assess Court Costs
- ☐ Exempt/Waive Mediation (EXMD)
- ☐ Extend Statute Of Limitations, Rule 9 (ESOL)
- ☐ Extend Time For Complaint (EXCO)
- ☐ Failure To Join Necessary Party (FJNP)

- ☐ Failure To State A Claim (FASC)
- ☐ Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
- ☐ Improper Venue/Division (IMVN)
- ☐ Including Attorney's Fees (ATTY)
- ☐ Intervene (INTR)
- ☐ Interplead (OTHR)
- ☐ Lack Of Jurisdiction (Person) (LJPN)
- ☐ Lack Of Jurisdiction (Subject Matter) (LJSM)
- ☐ Modification Of Child Support In IV-D Actions (MSUP)
- ☐ Notice Of Dismissal With Or Without Prejudice (VOLD)
- ☐ Petition To Sue As Indigent (OTHR)
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA)
- ☐ Sanctions (SANC)
- ☐ Set Aside (OTHR)
- ☐ Show Cause (SHOW)
- ☐ Transfer (TRFR)
- ☐ Third Party Complaint (list Third Party Defendants on back) (TPCL)
- ☐ Vacate/Modify Judgment (VCMD)
- ☐ Withdraw As Counsel (WDCN)
- ☐ Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

CLAIMS FOR RELIEF

- | | | |
|--|--|--|
| <input type="checkbox"/> Administrative Appeal (ADMA) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD) |
| <input type="checkbox"/> Appointment Of Receiver (APRC) | <input type="checkbox"/> Medical Malpractice (MDML) | <input type="checkbox"/> Real Property (RLPR) |
| <input type="checkbox"/> Attachment/Garnishment (ATTC) | <input type="checkbox"/> Minor Settlement (MSTL) | <input type="checkbox"/> Specific Performance (SPPR) |
| <input type="checkbox"/> Claim And Delivery (CLMD) | <input type="checkbox"/> Money Owed (MNYO) | <input checked="" type="checkbox"/> Other (specify and list each separately) |
| <input type="checkbox"/> Collection On Account (ACCT) | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) | Negligence; Gross Negligence, Willful and Wanton, Reckless Conduct |
| <input type="checkbox"/> Condemnation (CNDM) | <input type="checkbox"/> Negligence - Other (NEGO) | |
| <input type="checkbox"/> Contract (CNTR) | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN) | |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (PORP) | |
| <input type="checkbox"/> Injunction (INJU) | | |

Date

4/21/2020

Signature Of Attorney/Party

Whitney Hallam Williams

FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)
Substitution Of Trustee (Judicial Foreclosure) (RSOT)
Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)	
No.	<input checked="" type="checkbox"/> Additional Defendant(s) <input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
3	Simcha Hyman, 440 Sylvan Ave., Ste. 240, Englewood Cliffs, NJ 07632	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4	The Portopiccio Group, LLC	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5	Sherri L. Stoltzfus	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

STATE OF NORTH CAROLINA **FILED** THE GENERAL COURT OF JUSTICE
COUNTY OF ROWAN SUPERIOR COURT DIVISION

20-CVS-705

MARJORIE FULLER GARVIN,

Plaintiff,

v.

ACCORDIUS HEALTH, LLC,
ACCORDIUS HEALTH AT SALISBURY,
LLC d/b/a THE CITADEL SALISBURY,
SIMCHA HYMAN, THE PORTOPICCOLO
GROUP, LLC and SHERRI L. STOLTZFUS,

Defendants.

2020 APR 21 P 4: 22

ROWAN CO., C.D.C.

BY

COMPLAINT

By and through undersigned counsel, Plaintiff brings this action and allege as follows:

PARTIES

1. Plaintiff **Marjorie Fuller Garvin** during pertinent times has been a resident at the Citadel nursing home facility in Salisbury, North Carolina, Rowan County. She was born on January 25, 1924. Ms. Garvin has been a long-term resident of Rowan County for many decades raising her family here, with her husband, now deceased, Mr. Ben Garvin.

2. Defendant, **Accordius Health, LLC**, is a foreign limited liability company organized under the laws of the State of New York, with its principal office located at 440 Sylvan Avenue, Suite 240, Englewood Cliffs, NJ 07632. The Defendant may be served through its registered office address at 15720 Brixham Hill Avenue #300, Charlotte, NC 28277, or, at its corporate office address at 440 Sylvan Ave., Suite 240, Englewood Cliffs, NJ 07632. The Defendant operates nursing homes in the State of North Carolina under an application for a

certificate of authority to do business in the State of North Carolina filed on or about March 27, 2019 and signed by Hyman Simcha as its manager.

3. Defendant, **Accordius Health at Salisbury, LLC**, d/b/a The Citadel Salisbury, The Citadel at Salisbury, Citadel-Salisbury, the Salisbury Center and/or the Citadel, is a limited liability company organized under North Carolina law. Defendant may be served through its registered office address at 15720 Brixham Hill Avenue #300, Charlotte, NC 28277, or, at its corporate office address at 440 Sylvan Ave., Suite 240, Englewood Cliffs, NJ 07632.

4. Defendant **The Portopiccolo Group, LLC** is a private equity firm based in the greater New York area. It may be served with process at its offices at 440 Sylvan Ave., Suite 240, Englewood Cliffs, NJ 07632 or at its offices at 200 Boulevard of the Americas, Suite 105, Lakewood NJ 08701. On information and belief, it is organized as a limited liability company under New Jersey law. The Portopiccolo Group has been one of the most active investors in the nursing home sector in the last several years, with multiple acquisitions. In 2019, the firm announced the acquisition of additional facilities in North Carolina and Maryland, to go along with others that it controls in Virginia and New Jersey. On information and belief, the entity shares office spaces, managers, officers and infrastructure with the other entity defendants herein and materially participates in the ownership, operation and control over the relevant nursing home chain in North Carolina.

5. Defendant, **Simcha Hyman**, is the Chief Executive Officer of Defendant, Accordius Health at Salisbury, LLC, and the LLC member manager of Defendant Accordius Health, LLC. Mr. Hyman may be served with legal process at the address of 440 Sylvan Ave., Suite 240, Englewood Cliffs, NJ 07632, or, c/o 15720 Brixham Hill Avenue #300, Charlotte, NC 28277.

6. Defendant, **Sherri L. Stoltzfus**, as of April 7, 2020,¹ was the designated Administrator for The Citadel at Salisbury facility. Ms. Stoltzfus has been employed as a Licensed Nursing Home Administrator (“LNHA”) with the Accordius Health organization since February 2019. Ms. Stoltzfus is also listed to be the Administrator of the Accordius Health at Mooresville facility located in Iredell County at 752 East Center Avenue, Mooresville, NC 28115-2568. Ms. Stoltzfus may be served with process c/o the facility at 710 Julian Road, Salisbury, NC 28147-9079, c/o Accordius Health at Mooresville, 752 East Center Avenue, Mooresville, NC 28115-2568, or, at her residential address at 243 Collingswood Road, Mooresville NC 28117-9472.

7. Defendants own, operate and control, are employed at, or otherwise have materially jointly and severally participated in the facts giving rise to liability with regard to a nursing home facility known as The Citadel Salisbury, located in Salisbury, North Carolina, with a location address of 710 Julian Road, Salisbury, NC 28147. The facility has license number NH0441 and provider number 345286.

8. The Citadel nursing home is licensed by the North Carolina Division of Health Service Regulation, through its Nursing Home Licensure and Certification Section. In some licensing materials it is known simply as the “Salisbury Center.” It is operated by Defendants as a for-profit nursing home. On information and belief, it has a total of 160 beds available and accepts Medicare and Medicaid, and some or all of the premises date back to 1988.

9. Accordius Health LLC owns and operates a large chain of nursing homes in the State, via related entities including Accordius Health at Aberdeen, LLC, Accordius Health at Asheville, LLC, Accordius Health at Brevard, LLC, Accordius Health at Charlotte, LLC, Accordius Health at Clemmons, LLC, Accordius Health at Clemmons Propco, LLC, Accordius

¹ https://info.ncdhhs.gov/dhsr/data/nhlist_co.pdf.

Health at Concord, LLC, Accordius Health at Creekside Care, LLC, Accordius Health at Creekside Care Propco, LLC, Accordius Health at Gastonia, LLC, Accordius Health at Greensboro, LLC, Accordius Health at Hendersonville, LLC f/k/a Mountain Home Nursing and Rehabilitation LLC, Accordius Health at Lexington, LLC, Accordius Health at Minwood, LLC, Accordius Health at Queen City, LLC, Accordius Health at Monroe, LLC, Accordius Health at Mooresville, LLC, Accordius Health NC Office, LLC, Accordius Health at Rose Manor, LLC, Accordius Health at Rutherford, LLC f/k/a Pelican Health Rutherfordton LLCC, Accordius Health at Salisbury, LLC, Accordius Health at Scotland Manor, LLC, Accordius Health at Scotland Manor Propco, LLC, Accordius Health at Statesville, LLC, Accordius Health at Wilkesboro, LLC, Accordius Health at Wilmington, LLC, Accordius Health at Wilson, LLC, Accordius Health at Winston-Salem, LLC, Accordius Health at Winston-Salem Propco, LLC, Accordius NC5 Propcos LLC and Accordius NC Trio Propcos LLC.

10. The corporate Defendants hold themselves out as operating two facilities in Rowan County.² One is the subject Citadel facility. The other is Accordius Health at Salisbury, located at 635 Statesville Boulevard, Salisbury, NC 28144, which Defendants likewise operate as a for-profit nursing home. On information and belief, it has a total of 185 beds, accepts Medicare and Medicaid, and holds provider number #345115.

JURISDICTION AND VENUE

11. The Plaintiff's injury and harm occurred at the Citadel facility in Salisbury, Rowan County. This Court has jurisdiction over the parties and the subject matter as the amount in controversy exceeds the sum of \$25,000.

12. Venue is proper in this Court.

² <https://accordiushealth.com/locations/central-north-carolina/#submenu>.

FACTUAL ALLEGATIONS

I. Introduction.

13. Accordius Health touts itself as “a regional leader in the Southeast for quality, satisfaction and clinical competency in skilled nursing care and rehabilitation” with facilities located in North Carolina and Virginia.³ Accordius holds itself out to the public as having a “goal is to improve health and patient-driven care by placing residents at the center of their care.”

14. In fact, nothing could have been further from the truth at the Accordius nursing home facility known as the Citadel and located in Salisbury. The facility was poorly staffed and supported by its corporate owners and by February 24, 2020 had received an agency inspection report reflecting unsafe and unsanitary conditions. Yet the company failed to correct matters and created a lethal and growing reservoir of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) virus, which is the causative agent of the COVID-19 disease. The COVID-19 disease is known to be especially deadly for elderly individuals who may have chronic health conditions and weakened immune systems.

15. As self-proclaimed sophisticated elder care professionals with vast financial resources at their disposal, the Defendants had a duty to conduct immediate, extensive due diligence and take any and all steps as were necessary upon the first occurrence of information reflecting the emergence of the COVID-19 virus in China and the facts of its spread thereafter.

16. However, the Defendants failed to do so, resulting in the injuries to Ms. Garvin and impact on the community alleged below.

17. The Plaintiff, Ms. Garvin, while elderly, was a lucid and vibrant individual when she and her close family and caretakers decided to place her at the Citadel facility in February

³ Accordius website, <https://accordiushealth.com/>.

2020. They did not know the danger awaiting her there. They paid approximately \$11,000 per month and were assured she would have a private room and quality care.

18. Because Accordius failed to take prompt and preemptive action as the Coronavirus health problem came to light and began to spread, Ms. Garvin herself became a victim. As of the date of the filing of this Complaint she is seriously ill with the virus. This complaint is filed for the serious injury and suffering that the Plaintiff as well as others who are similarly situated have suffered and continue to suffer due to the negligent, reckless and culpable conduct for which the Defendants are jointly and severally responsible.

II. Conditions at the Citadel as of February 2020.

19. A recent agency survey of the facility is reported by a State health authorities through a Department of Health and Human Services, Centers for Medicare & Medicaid Services form dated February 24, 2020.⁴ The report was generated after an unannounced recertification survey which was conducted during January 27 to 31, 2020.

20. That facility survey noted safety and resident care risks and regulatory violations including under 42 C.F.R. § 483.10 pertaining to resident rights. The inspectors found that based on records review, observations, and resident and staff interviews, the facility failed to resolve repeated concerns reported during resident council meetings related to not answering “call lights” for three consecutive months, not cleaning showers for six consecutive months, along with other violations. These conditions laid the groundwork for the virus to flourish.

21. Under 42 C.F.R. § 483.10(a), nursing home residents have “a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility.”

⁴ Available at <https://info.ncdhhs.gov/dhsr/facilities/nh/2020/20200402-923354.pdf>.

22. Under 42 C.F.R. § 483.10(a)(1), “[a] facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality. The facility must protect and promote the rights of the resident.”

23. The February 2020 inspection report found that these rights were not being protected. Among other things, the inspection noted that residents had been affected by deficient practices. In one of the shower rooms, it was noted that there was “gray colored grout” and on the walls, “long streaks of direct white drainage.” In another shower room, pursuant to the inspection, “the washcloth with the dark brown spots and the wadded-up washcloth was removed.” The report noted that “[a]ll residents are at risk of deficient practice.”

24. The February 2020 report also noted that the Resident Council Meeting Minutes from September 6, 2019 specified concerns related to “Nursing Assistants (NA) not cleaning shower room after shower;” that “Residents must wait 30-45 minutes for call lights to be answered; and (The NA turns off the light and leaves the room without addressing the concern).” These were endemic problems. Thus a subsequent set of Resident Council Meeting Minutes from October 4, 2019 specified similar concerns: “Nursing Assistants (NA) not cleaning shower room after shower;” and “Residents must wait 30-45 minutes for call lights to be answered (The NA turns off the light and leaves the room without addressing the concern).”

25. In connection with the facility inspection, an interview with the resident council group was held on January 29, 2020 at 11:00 a.m. and 23 residents attended. During the interview, residents voiced concerns that the facility was not resolving grievances that were voiced during meetings. Residents stated, “They act like they are interested, and nothing happens.” “The showers are not cleaned, and they say they will jump right on it, but nothing gets done.” “Call lights are

being answered because you (meaning state surveyors) are here this week, as soon as you leave the building, it will go back to normal.” Thirteen out of 23 residents that attended the resident group interview raised their hands to indicate the NAs will come into their rooms, turn off their call light and leave their room without addressing their concerns.

26. The inspectors conducted an observation of the “500/600 shower room” on January 28, 2020 at 2:30 p.m. which revealed dry skin on the shower stretcher in the shower room. An observation of the “300 shower room” was completed on January 29, 2020 at 10:00 a.m. “Gray colored grout was black in several areas. Loose black flaky particles were noted on the shower floor. The shower walls had long streaks of dried white drainage.”

27. An observation of the 500/600 shower room on January 28, 2020 at 4:00 p.m. observed: “Dark black grout was observed on some of the floor tiles on one of the shower stalls. A white washcloth with dark brown spots was hanging on the shower curtain bar in a shower stall. A second wet wash cloth was wadded up and lying on the shower shelf in a stall, as well as dark black grout noted on some of the floor tiles.”

28. Under the relevant regulations at 42 C.F.R. § 483.12, the nursing home residents have a right to be free from abuse, neglect and exploitation. The February 2020 report related that that requirement had not been met either, as based on “record review, resident, family and staff interviews the facility failed to protect a resident’s right to be free from physical abuse.”

III. Ms. Garvin is housed at the Citadel in February 2020 and grows ill.

29. Family and caretakers of the Plaintiff moved Ms. Garvin to the Citadel nursing facility in Salisbury in February 2020. Neither the Plaintiff nor her caretakers and loved ones had any idea of the poor and dangerous conditions then existing at the facility.

30. Ms. Garvin previously had been at the Liberty Commons facility to undergo rehabilitation. That facility was not able to offer long-term accommodations. Accordingly, the concerned family and friends of Ms. Garvin had her moved to the Citadel facility.

31. They had Ms. Garvin placed in a private room as a private-pay resident. This cost a significant amount of funds, approximately \$11,000/month.

32. As concerned family and friends were only later to learn, at some point, the Citadel staff had moved Ms. Garvin from her normal room to an apparent "quarantine hall." On information and belief, she had a urinary tract infection and was running a fever.

33. On information and belief, the staff at that time moved Ms. Garvin into the hall with a resident who had tested positive for COVID-19. Concerned family and friends including Ms. Garvin's close friend and outside caretaker who held a power of attorney were not told anything. They were left utterly in the dark as her life was placed in jeopardy.

34. Eventually, Ms. Garvin herself, though in a weakened condition, telephoned her adult son to express her fear and confusion over what was occurring.

35. Family and friends became very concerned as to why the facility had moved Ms. Garvin to another part of the facility. They sought over and over again to reach the nursing home staff or front desk by phone to no avail. Eventually they found out that the nursing home without advising them had moved Ms. Garvin from her own private room to another room where there was a resident who had tested positive for the pandemic virus.

36. By that time, on information and belief, the facility already had two residents who had been moved to Rowan Hospital in its critical care unit due to the virus.

37. Ms. Garvin's loved ones had not been called, contacted or updated. They had not been notified when Ms. Garvin had been assessed to have a UTI or a fever.

38. On information and belief, it was not until on or about April 10 that Defendants took steps such that the facility got test kits; it was not until on or about April 10 or April 11 that all staff and residents were tested. However, family members were not advised.

39. Meanwhile the loved ones of the Plaintiff began to realize from reading news articles about the dire conditions at the Citadel facility. They called the facility seeking to know the results of tests for the virus. At that point they were referred to the “corporate office.”

40. On April 13, one of them was able to speak to an administrator, who related words to the effect of, that “corporate was handling this.” Also, this contact person related that local facility staff had not been given a copy of information showing who tested positive or negative. Only “corporate” had it.

41. When attempts were made to telephone the corporate representatives, these efforts were unsuccessful on April 13 and 14. Finally, during a call on April 15, Ms. Garvin’s power of attorney holder was able to speak again to an administrator. That person related that she herself had called corporate, having received so many calls from families, and needing information. She related how she was trying to keep up with a list of everyone she called to track who called in and who had been contacted. She related how there were many families who were calling her and had not been notified of the status of their elders and loved ones receiving care at the facility.

42. The family and friends were advised that Ms. Garvin had tested positive for the virus. On information and belief, the facility, due to the negligence and reckless conduct of the Defendants compounded by a lack of funding, staffing, intervention or oversight, moved Ms. Garvin to the quarantine hall that contained one or more infected COVID-19 residents, without adequately assessing or confirming her own health condition, without notifying properly her

family and loved ones or power of attorney holder, and further, without considering that she would be far safer if kept alone in her private room or if immediately moved to a hospital facility.

43. One or more family members or close acquaintances were notified on April 20, 2020 that Ms. Garvin was in a weakened condition and requested to be able to visit. The facility administrator stated that the adult son of Ms. Garvin, and certain other friends and caretakers could visit, but only if they arrived prior to 4:30 that day because the receptionist would leave. On information and belief, the Defendants failed to provide additional staff or take other emergency steps or even allocate more overtime pay regardless of the circumstances.

44. When the family and friends arrived at the Citadel facility, they were provided with a disposable suit, booties and a facemask, but not any gloves. When they were escorted to the quarantine hall, it was like walking into a death ward.

45. More recently, the family received an unsigned form letter from Accordius Health. The letter states vaguely that the company is working on center-specific plans to make things better.

46. As a direct and proximate result of the negligence of Defendants, Plaintiff has been injured and harmed and the entire community has been endangered.

IV. More recent developments reflect further negligence of the Defendants.

47. As of Monday, April 20, 2020, with regard to the outbreak of COVID-19 at the Citadel facility in Salisbury, it was reported that there were at least 96 positive cases among the facility's residents, 17 employees who had tested positive and an unknown number of fatalities.

48. According to one or more medical professionals who provided information publicly out of their mounting concern over the situation,⁵ the first patient who ended up being positive

⁵ <https://www.salisburypost.com/2020/04/20/john-bream-outbreak-at-citadel-nursing-home-especially-concerning/>.

from the Citadel presented to the emergency department at Novant Health Rowan Medical Center on April 4, 2020. In the next three days, the emergency department would see and admit several more patients from this facility, and it became clear an outbreak had occurred.

49. With no communication or assistance from the Defendants or the Citadel facility, it was reported that a discussion occurred among the local hospital emergency department's leadership team on the night of April 7, 2020 about their concerns and the need for action. On April 8, multiple meetings occurred. The emergency department's team reached out to the Rowan County Health Department.

50. COVID-19 tests were collected at the Citadel on April 10th, refrigerated overnight and driven to the state lab on April 11th. It was also only on or about April 10th or 11th that the Citadel first notified some families of the possibility of exposure. That occurred nearly a week after the first suspected case was seen in the emergency department and, at that time, at least five COVID-19 positive patients had been identified at the hospital. Notification occurred over three months after China first reported a cluster of cases of pneumonia in Wuhan, Hubei Province leading to subsequent awareness throughout the community of healthcare professionals including through the World Health Organization, which on January 1, 2020 set up an Incident Management Support Team across the three levels of the organization, including headquarters, regional headquarters and national level, putting the organization on an emergency footing for dealing with the outbreak.⁶

51. On April 12th, it was noted on the N.C. Department of Health and Human Services website that a significant increase in COVID-19 cases had occurred in Rowan County. On April

⁶ <https://www.who.int/news-room/detail/08-04-2020-who-timeline---covid-19>.

13th, it was confirmed from one or more medical professionals at the hospital that this increase was from the first wave of positive Citadel results.

52. Initial results from the Citadel showed that 85 residents were positive and 15 negative for the virus. On an internal call on April 13th, it was also revealed that 15 Citadel residents were not tested. Among the facility's team members tested, 32 were tested, with 17 found to be positive, four negative, and the rest with results still pending.

53. In that manner, Defendants put not only residents in harm's way, but also their own front-line employees at the facility.

54. On April 13th, an emergency room physician saw several disturbing circumstances, as were subsequently related in an article published in the Salisbury Post and are excerpted below verbatim:

“• My first patient of the day was from the Citadel, positive for COVID-19 and in serious condition. I called the family to let them know the patient was in the emergency department, and I was exasperated to know that the family had not been made aware — now at least a day and a half later — that their family member was positive for COVID-19. Unfortunately, this patient succumbed to the illness the next day.

• About an hour later, I had a patient who was an employee of the Citadel who was experiencing symptoms. She volunteered that she felt the facility had ‘dropped the ball.’ Being extensively involved in the situation, I asked her if she would mind sharing what she meant. She told me that the staff had repeatedly asked to wear masks and were denied by the facility's leadership. She also told me that the staff had asked to wear gowns. Only after patients started to get sick were those measures implemented. The employee lamented that, ‘By then, it was too late.’

• A few hours later, I got my second case of the day from the Citadel. I called the family to let them know the patient was in the emergency department, and this family was also unaware that their loved one was positive for COVID-19.

• I then contacted a member of our nursing staff who I knew had family at the Citadel. She also confirmed that her family had not been made aware of the outbreak.

- My last patient of the shift came in around 11 p.m. The patient was from the Citadel, COVID-19 positive and in critical condition. I called the family immediately because it was apparent that without major, invasive interventions the patient would not survive. After a discussion with the family, it was decided we would make the goal of care to keep the patient comfortable and transition to palliative care. Denied knowledge that the family member was critically ill and COVID-19 positive and unable to come to the hospital, I called the patient's daughter on FaceTime so that she could have one more final moment with her father in which she could tell him she loved him one last time.

The patient died approximately 18 hours later.”

55. On information and belief, Defendants’ management of the infectious disease conditions at the Citadel, both before and after the advent of the first diagnosed COVID-19 case amongst the residents, was not in compliance with guidance from the Centers for Medicare & Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC). <https://www.cms.gov/files/document/4220-covid-19-long-term-care-facility-guidance.pdf>.

56. On information and belief, the Citadel did not immediately ensure that it was complying with the CMS and CDC guidance on infection control, including for example, basic provisions such as appropriately identifying and triaging potentially infected residents, prevention of cross-contamination and infection of healthy residents, and appropriate use of personal protective equipment (PPE).

57. Incredibly, even after the Citadel facility became publicized to be a hotbed of Coronavirus cases, the corporate Defendants have continued to fail to rectify conditions.

58. Most recently, on Monday, April 20, 2020, according to news reports, the facility staff repeatedly ignored calls from the Salisbury Police Department.⁷ The law enforcement officers were seeking to contact the facility inquiring about the condition of a resident at The Citadel-Salisbury. However, the calls were repeatedly ignored. The triggering events were that on

⁷ See <https://www.wbtv.com/2020/04/21/report-citadel-ignored-calls-police-about-woman-needing-go-restroom/>.

Monday at approximately 2:00 pm, a 77-year-old resident contacted her son to say that she needed to go to the restroom and could not get anyone from the staff to help her. By 5:00 pm, the woman still had not gotten any help. The son then called police. Officers began calling The Citadel, but no one answered their calls. An officer drove to the Citadel and rang a doorbell, but no one answered. A police supervisor said that this was the second call from the family member of a Citadel resident who said that they were concerned about a loved one and could not get any communication from The Citadel.

59. The company has the means to support its nursing homes and never should have let conditions become so egregious. In this regard, Defendant Simcha Hyman has been the Chief Executive Officer at The Portopiccio Group, located in Englewood Cliffs, New Jersey in the greater New York City area, since 2017. He also holds himself out to be the Chief Executive Officer of Accordius Health since 2016. Prior to that, Mr. Hyman was also the President of Ultra Medical Supply Inc. and the President of Murphy Homecare.

60. Numerous news articles reflect the financial resources of the company. As one example, in September 2019, the company announced that Capital Funding, LLC had entered into a deal valued at \$36.9 million to allow The Portopiccio Group obtain control over additional facilities in Virginia and Maryland. Accordius Health, as a subsidiary of The Portopiccio Group, would take over day-to-day operations of both properties.

61. The Accordius entities and their affiliates have significant resources at their disposal, which, however they have failed to use to ensure the proper level of care and safety as well as crisis response at their care facilities including specifically the Salisbury facility.

FIRST CLAIM FOR RELIEF: NEGLIGENCE

62. Plaintiff incorporates by reference all prior allegations contained in the Complaint as if fully set out herein.

63. During the pertinent times, Defendants owed a duty of care to Plaintiff to provide a safe nursing home setting.

64. In addition, Defendants had duties of care flowing from the requirements for nursing homes set out by federal and state regulations including but not limited to the following:

- a. "A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life." 42 § C.F.R. 483.15.
- b. "The facility must provide a safe, clean, comfortable, homelike environment...." 42 C.F.R. § 483.15(h)(1).
- c. "Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care." 42 C.F.R. § 483.25.
- d. "The facility must ensure that – (1) The resident environment remains as free of accident hazards as is possible; and (2) Each resident receives adequate supervision and assistance devices to prevent accidents." 42 C.F.R. § 483.25(h).
- e. "The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident...." 42 C.F.R. § 483.30.
- f. "The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection." 42 C.F.R. § 483.65.
- g. "The facility must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public." 42 C.F.R. § 483.70.
- h. Furthermore, under 10A NCAC 13D .2209(a), "[a] facility shall establish and maintain an infection control program for the purpose of providing a safe, clean and comfortable environment and preventing the transmission of diseases and infection."

65. During the pertinent times, Defendants knew or should have known of the danger of allowing the Plaintiff to be put in a position in which multiple safety and resident care rules were being broken and where she and others were at risk for COVID-19 infection.

66. Defendants negligently and recklessly breached their duty of due care toward Plaintiff including by their:

- a. Failure to investigate and stay abreast of the pandemic virus;
- b. Failure to consider the safety of residents, employees and others;
- c. Failure to protect others from undue harm and exposure to dangerous conditions;
- d. Failure to take adequate measures and precaution to prevent Plaintiff from injury or illness;
- e. Failure to abide by the rules and requirements applicable to a nursing home involving elder individuals; and
- f. Willful and intentional disregard for the rights and safety of others.

67. Defendants are jointly and severally liable for compensatory damages as a direct and proximate result of their negligent, grossly negligent, willful and wanton conduct described herein.

68. Defendants' relevant acts and omissions were a legal and proximate cause of the injury to Plaintiff.

69. As a direct and proximate result of Defendants' breaches of duty, the Plaintiff has suffered injury and has been damaged in amount in excess of \$25,000.

**SECOND CLAIM FOR RELIEF: GROSS NEGLIGENCE,
WILLFUL AND WANTON, RECKLESS CONDUCT**

70. Plaintiff incorporates by reference all prior allegations contained in the Complaint as if fully set out herein.

71. Plaintiff was injured while in the care of the Defendants and their staff at the Citadel facility, due to the grossly negligent and/or reckless conduct of Defendants and their employees acting in the normal course and scope of their work duties.

72. Defendants failed to take adequate measures and precaution to prevent the Plaintiff or other nursing home residents from injury.

73. The acts of Defendants, as hereinabove set forth were grossly negligent and reckless and reflected willful disregard of the safety of the Plaintiff and other similarly situated at a time when Defendant had knowledge, or should have had knowledge, of the dangerous effect of violating care responsibilities and allowing residents of the nursing home to be neglected and mismanaged. Defendants' conduct occurred with reckless disregard of the safety of the Plaintiff and others similarly situated. Defendants failed to adequately monitor, protect, and guard the Plaintiff from injury and serious illness.

74. Defendants are also liable for punitive damages in accordance with N.C. Gen. Stat. § 1D-1 *et seq.* The conduct of the Defendants, as set forth herein, was reckless and willful and wanton under the circumstances.

75. The conduct by Defendants, as referenced above, justify an award of punitive damages. Pursuant to N.C. Gen. Stat. § 1D-15(a), Defendants are properly liable for punitive damages in this action in that Defendants are liable for compensatory damages and has committed one or more aggravating factors justifying an award of punitive damages, including without limitation, acts of egregious, reckless, willful and wanton conduct.

76. As a direct and proximate result of its acts and omissions herein, Defendants are jointly and severally liable for punitive damages.

JURY TRIAL DEMANDED

Plaintiff requests a trial by jury of all claims and causes of action that are so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter its judgment finding and ordering as follows:

- A. Awarding Plaintiff all actual and compensatory damages to which Plaintiff is entitled by law for the negligence and culpable conduct of the Defendants;
- B. Awarding the Plaintiff punitive damages;
- C. Awarding any costs, fees, and expenses and pre-judgment and post-judgment interest as may be allowable by law; and
- D. Awarding such other and further relief as this Court may deem just and proper.

This the 21st day of April, 2020.

WALLACE & GRAHAM, P.A.



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