



Court File No.

Electronically issued : 01-Feb-2021
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Barrie

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**GEORGE HEAD by his Litigation Guardian MARCELLA LAMBIE, and
MARCELLA LAMBIE**

Plaintiffs

- and -

**859530 ONTARIO INC., BARRIE LONG TERM CARE CENTRE INC.,
JARLETTE HOLDINGS INC., JARLETTE LTD., and
ROBERTA PLACE RETIREMENT LODGE INC.**

Defendants

(Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6)

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The Claim made against you is set out in the Statement of Claim served with this Notice of Action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer(s), or where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedures. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting your local Legal Aid office.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: January 29, 2021

Issued by

Registrar

Address of Court Office:
75 Mulcaster Street
Barrie, ON L4M 3P2

TO: 859530 ONTARIO INC.
o/a Jarlette Health Services
5 Beck Blvd
Penetanguishene, ON L9M 1C1
djarlette@jarlette.com

AND TO: BARRIE LONG TERM CARE CENTRE INC.
o/a Roberta Place
711 Yonge Street
Midland, ON L4R 2E1
djarlette@jarlette.com

AND TO: JARLETTE HOLDINGS INC.
711 Yonge Street
Midland, ON L4R 2E1
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AND TO: JARLETTE LTD.
711 Yonge Street
Midland, ON L4R 2E1
djarlette@jarlette.com

AND TO: ROBERTA PLACE RETIREMENT LODGE INC.
o/a Roberta Place Retirement Lodge
5 Beck Blvd
Penetanguishene, ON L9M 1C1
Phone: (705) 733-3231
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djarlette@jarlette.com

CLAIM

1. The Plaintiff George Head by his Litigation Guardian Marcella Lambie, claims on his own behalf and on behalf of the Class Members as defined below:

- a. An Order pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, as amended, certifying this proceeding as a class proceeding and appointing Marcella Lambie as the Representative Plaintiff for the Class;
- b. A declaration that 859530 Ontario Inc., Barrie Long Term Care Centre Inc., Jarlette Holdings Inc., Jarlette Ltd., and Roberta Place Retirement Lodge Inc. (collectively, the “Defendants”) owed duties of care to the Plaintiff George Head and the Class with respect to retirement or long-term care facilities that they own, operate, and manage during the COVID-19 pandemic;
- c. A declaration that the Defendants breached their duties of care to the Plaintiff George Head and to the Class by engaging in the conduct described below;
- d. A declaration that the Defendants are liable to the Plaintiff George Head and to the Class for damages caused or materially contributed to by the Defendants’ breaches of their fiduciary and common law duties of care;
- e. A declaration that the Defendants are vicariously liable for the acts and omissions of their officers, directors, agents, employees, and representatives;
- f. Damages for the Defendants’ breach of contract, negligence, gross

negligence, and breach of fiduciary duty in the amount of \$25,000,000.00 or such other amount as this Honourable Court may find appropriate;

- g. Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, as amended, in the amount of \$100,000.00 for each such Plaintiff;
- h. Punitive, aggravated, exemplary, and mental distress damages in the amount of \$25,000,000.00 or such other amount as this Honourable Court may find appropriate;
- i. Damages in an amount to be fixed by this Honourable Court for the costs of providing notice of certification of this action as a class proceeding, and for administering the plan of distribution of the recovery of this action, plus applicable taxes;
- j. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- k. The costs of this Action on a substantial indemnity basis, plus applicable goods and services and harmonized sales taxes; and
- l. Such further and other relief as may be required and as this Honourable Court deems just.

BACKGROUND

2. COVID-19 is a disease of public health significance and has been designated as communicable under Ontario Regulation 135/18, as amended. COVID-19 has been

declared a pandemic by the World Health Organization. The Province of Ontario has enacted emergency orders under the *Emergency Management and Civil Protection Act* as a result of the pandemic. Those orders have been continued under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*.

3. COVID-19 is present in the County of Simcoe and therefore poses a risk to the health of the residents of Simcoe Muskoka through community transmission. The COVID-19 virus is spread from an infected person to an uninfected person by direct contact or from a close encounter where respiratory secretions from the infected person are transmitted to the uninfected person.

4. Institutional settings such as Roberta Place Long Term Care Home facilitate the spread of COVID-19 and other communicable diseases where infection prevention and control measures and guidelines are not implemented and strictly complied with.

5. The elderly are especially vulnerable to COVID-19 and are entitled to care from properly trained and equipped staff, in a proper environment with adequate testing and response protocols to prevent the introduction or spread of COVID-19.

6. Residents of Roberta Place Long Term Care Home are on average older than the general population and are more vulnerable to COVID-19.

7. The Defendants failed to protect the residents living in the Roberta Place Long Term Care Home through their inadequate general planning and preparation for a viral respiratory outbreak.

8. In the months after COVID-19 emerged on the world stage and before any

outbreaks in Ontario, the Defendants again failed to protect the residents in the Roberta Place Long Term Care Home by not putting in place adequate measures to prepare for and respond to the COVID-19 virus.

9. After the COVID-19 virus took root in Canada, the Defendants again failed to protect the residents living in the Roberta Place Long Term Care Home by repeatedly failing to follow the leadership of public health officials and comply with public health guidance and directives regarding:

- a. outbreak planning;
- b. supply, use, and access to PPE;
- c. visitor, supplier, and service personnel screening;
- d. resident isolation and testing, and;
- e. employee testing and screening.

10. As a result of the Defendants' failures to adequately and properly plan, prepare and respond to the COVID-19 virus, the virus has run rampant through the Roberta Place Long Term Care Home.

11. On January 8, 2021, the Simcoe Muskoka District Health Unit declared a COVID-19 outbreak at Roberta Place Long Term Care Home.

12. On January 16, 2021, the Simcoe Muskoka Health Unit issued an order that would allow the Orillia Soldiers' Memorial Hospital to temporarily lead Roberta Place Long Term Care Home in controlling the COVID-19 outbreak. The Canadian Red Cross

was also deployed to help.

13. On January 26, 2021, the health unit confirmed 127 of the facility's 129 residents had contracted the virus.

14. As of January 29, 2021, 53 residents living at the Roberta Place Long Term Care Home have died of COVID-19 related complications. In most cases, they died alone without their families and loved ones at their side. In addition, one essential caregiver has died of COVID-19 related complications.

THE PARTIES

15. The Plaintiff Marcella Lambie is a resident of the Township of Oro-Medonte, in the Province of Ontario, and is also the Litigation Guardian of her brother, George Head, a resident of Roberta Place Long Term Care Home, a retirement and long-term care facility based in Barrie, Ontario.

16. The Defendant 859530 Ontario Inc. is a privately held owner-operator of nursing and health care centres in Ontario. 859530 Ontario Inc. is a body corporate duly incorporated pursuant to the laws of Ontario and was at all material times the operator of, or had ownership interests in, Jarlette Health Services, located at 5 Beck Blvd, in the Town of Penetanguishene, in the County of Simcoe, in the Province of Ontario. 859530 Ontario Inc. was at all material times an operator, owner, and/or administrator of the Roberta Place Long Term Care Home in which George Head is a resident.

17. The Defendant Barrie Long Term Care Centre Inc. is a privately held owner-operator of retirement and long-term care facilities in Ontario. Barrie Long Term Care

Centre Inc. is a body corporate duly incorporated pursuant to the laws of Ontario and was at all material times the operator of, or had ownership interests in, Roberta Place Long Term Care Home, located at 503 Essa Road, in the City of Barrie, in the County of Simcoe, in the Province of Ontario. Barrie Long Term Care Centre Inc. was at all material times an operator, owner, and/or administrator of the Roberta Place Long Term Care Home in which George Head is a resident.

18. The Defendant Jarlette Holdings Inc. is a privately held owner-operator of retirement and long-term care facilities in Ontario. Jarlette Holdings Inc. is a body corporate duly incorporated pursuant to the laws of Ontario and was at all material times the operator of, or had ownership interests in, Roberta Place Long Term Care Home, located at 503 Essa Road, in the City of Barrie, in the County of Simcoe, in the Province of Ontario. Jarlette Holdings Inc. was at all material times an operator and/or owner of the Roberta Place Long Term Care Home in which George Head is a resident.

19. The Defendant Jarlette Ltd. is a privately held owner-operator of retirement and long-term care facilities in Ontario. Jarlette Ltd. is a body corporate duly incorporated pursuant to the laws of Ontario and was at all material times the operator of, or has ownership interests in, Roberta Place Long Term Care Home, located at 503 Essa Road, in the City of Barrie, in the County of Simcoe, in the Province of Ontario. Jarlette Ltd. was at all material times an operator and/or owner of the Roberta Place Long Term Care Home in which George Head is a resident.

20. Jarlette Ltd. owns, operates, manages and/or advises at least four long-term care and retirement facilities, including the following:

- a. **Temiskaming Lodge**
100 Bruce Street,
Haileybury, ON P0J 1K0

- b. **The Villa Retirement Lodge**
Left Side Entrance,
689 Yonge Street,
Midland, ON L4R 2E1

- c. **The Villa Care Centre**
Left Side Entrance,
689 Yonge Street,
Midland, ON L4R 2E1

- d. **The Villa Care Centre and Retirement Lodge**
Left Side Entrance,
689 Yonge Street,
Midland, ON L4R 2E1

21. The Defendant Roberta Place Retirement Lodge Inc. is a body corporate duly incorporated pursuant to the laws of Ontario and was at all material times the operator of, or had ownership interests in, Roberta Place Long Term Care Home, located at 503 Essa Road, in the City of Barrie, in the County of Simcoe, in the Province of Ontario. Roberta Place Retirement Lodge Inc. was at all material times an operator, owner, and/or administrator of the Roberta Place Long Term Care Home in which George Head is a resident.

22. The Defendants are for-profit private corporations that are paid to house and look after some of the most vulnerable members of our society: the elderly and those individuals requiring assistance with various aspects of daily living due to mental or physical incapacity.

THE CLASS

23. Marcella Lambie brings this Action on behalf of: (1) all individuals who tested positive for COVID-19 living in, or working at, Roberta Place Long Term Care Home, from January 10, 2020 to the end of the COVID-19 Pandemic (the “Pandemic Period”); (2) the estates of all individuals who died while living in, or working at, Roberta Place Long Term Care Home during the Pandemic Period; and (3) the family members of all such individuals referred to in (1) and (2) (together the “Class Members” or the “Class”).

THE EVENTS LEADING TO INJURY

24. On September 1, 2016, the Plaintiff George Head moved into the Roberta Place Retirement Lodge.

25. In or around March 2018, George Head transferred to the Roberta Place Long Term Care Home where he resides today.

26. On January 16, 2021, the Plaintiff Marcella Lambie was informed by a Roberta Place Long Term Care Home staff member that her brother, the Plaintiff George Head, was afebrile, weak, fatigued, and needed a test to determine whether he had contracted COVID-19.

27. On January 18, 2021, Marcella Lambie was informed that her brother George Head had tested positive for COVID-19.

28. On January 23, 2021, George Head had a fever, chest congestion, his oxygen saturation fell to 90%, he had an increased heart rate, difficulty swallowing, and he developed aspiration pneumonia.

29. George Head's physical and cognitive condition deteriorated significantly, such that George could no longer walk, talk, or feed himself without assistance.

30. Since testing positive for COVID-19, George Head has been isolated to his room and now requires the use of a wheelchair. He requires 24-hour care for all his activities of daily living.

31. George Head's physical and cognitive condition continues to deteriorate.

THE NEGLIGENCE

32. The Defendants knew, or ought to have known, that the COVID-19 crisis constituted a serious danger to the residents and staff of Roberta Place Long Term Care Home.

33. The Defendants knew, or ought to have known, that the residents of Roberta Place Long Term Care Home were among the most vulnerable in the population to contracting severe or fatal symptoms of COVID-19.

34. The Defendants knew, and it was reasonably foreseeable, that the Plaintiffs and Class Members would trust and rely on the Defendants both to plan for acute respiratory infection outbreaks and to execute an outbreak plan.

35. The Defendants owed a duty of care to the Plaintiffs and the Class with respect to the management of the Roberta Place Long Term Care Home during the COVID-19 pandemic. At all relevant times, the Defendants had an obligation to safeguard the life, health, and dignity of George Head and the Class Members and to ensure continued and adequate care.

36. At all material times the Defendants owed a duty of care to the Plaintiffs and Class Members to ensure that there were reasonable protocols and procedures in place to protect the residents and staff of Roberta Place Long Term Care Home and prevent the introduction or spread of COVID-19.

37. At all material times, the Defendants had an obligation to take reasonable steps to ensure the safety, well-being, health, and dignity of residents and staff in Roberta Place Long Term Care Home. The Defendants knew, or ought to have known, that residents in Roberta Place Long Term Care Home were a vulnerable population requiring appropriate safeguards and measures to prevent them from contracting, or be put at risk of contracting, COVID-19. In particular, the Defendants knew, or ought to have known, that the dangers arising from COVID-19 infection posed a serious and credible risk to residents of Roberta Place Long Term Care Home. Given their age, pre-existing health conditions, and close proximity to one another, residents of Roberta Place Long Term Care Home were and continue to be at an increased risk of suffering a severe reaction and/or death as a result of a COVID-19 infection.

38. The Defendants breached this duty of care to the Plaintiff and the Class by failing to properly and adequately plan for and respond to the COVID-19 pandemic, by failing to implement adequate sanitary measures to mitigate the risk of transmitting the disease within Roberta Place Long Term Care Home, when they knew, or ought to have known, that having adequate PPE and sanitary measures were required to protect the health, safety, well-being, and dignity of the residents and staff, by failing to have adequate measures within the Roberta Place Long Term Care Home to care for the residents in a safe and competent manner, by failing to communicate adequately with families of

residents, and by repeatedly failing to comply with public health guidance and directives.

39. The standard of care reasonably expected in the circumstances required the Defendants to properly and adequately plan for and respond to the COVID-19 pandemic, implement adequate sanitary measures to mitigate the risk of transmitting the disease within Roberta Place Long Term Care Home, to care for the residents in a safe and competent manner, communicate reasonably with families of residents, and to act reasonably to ensure compliance with public health directives and guidance with respect to acute respiratory infections generally and to the COVID-19 pandemic specifically. The negligent failure of the Defendants to ensure compliance with the minimum standards is the direct and proximate cause of damage to the Plaintiff George Head and the Class.

40. At the time of the issuance of this Claim, Roberta Place Long Term Care Home has 53 resident deaths, one essential caregiver death, 128 active resident COVID-19 cases, and 84 active COVID-19 cases amongst staff/team members.

41. As set out below, the Defendants 859530 Ontario Inc., Barrie Long Term Care Centre Inc., Jarlette Holdings Inc., Jarlette Ltd., and Roberta Place Retirement Lodge Inc. were each negligent in that they:

- a. failed to properly and adequately plan for and respond to the COVID-19 pandemic;
- b. failed to implement COVID-19 outbreak control measures as per the Ministry of Health's COVID-19 Outbreak Guidance for Long-Term Care Homes (April 15, 2020);

- c. failed to ensure adequate staffing levels to implement the outbreak control measures required by the Province, and public health guidance and directives;
- d. failed to monitor all residents and staff in the home for new symptoms compatible with COVID-19 (including atypical symptoms);
- e. failed to have adequate staff within the Roberta Place Long Term Care Home to care for the residents in a safe and competent manner;
- f. failed to quickly identify symptomatic residents and staff, and when symptoms of COVID-19 were identified, initiate Droplet and Contact Precautions (as described by Public Health Ontario), ensure a test for COVID-19 for any resident and staff with symptoms compatible with COVID-19 (including atypical symptoms) was completed, and perform an assessment for the expansion of any existing designated outbreak areas within the Home;
- g. failed to institute staff (including housekeeping, janitorial, maintenance, etc.) and resident cohorting to prevent the spread of COVID-19 within the Home;
- h. failed to institute cohorting of the infected and uninfected residents and staff;
- i. failed to institute alternative resident accommodation to maintain spatial separation of two meters;

- j. failed to utilize respite and palliative beds/rooms to provide additionally distanced or isolated resident accommodations;
- k. failed to utilize other rooms within the Home as appropriate to help maintain isolation of affected residents and staff;
- l. failed to ensure adequate staffing levels (immediately and in preparation for the remainder of the outbreak) so as to sufficiently designate each staff person to provide care for either a cohort of infected residents or a cohort of uninfected residents during the outbreak, but not both;
- m. failed to decline new resident admissions until the outbreak is declared over by the local district health unit;
- n. failed to decline re-admission of residents who were not part of the outbreak line list into the outbreak areas until the outbreak is declared over by the local district health unit;
- o. failed to provide in-room tray service for food and beverages to residents to restrict communal dining and the potential exposure to COVID-19;
- p. failed to increase the frequency of environmental cleaning for frequently touched surfaces and provide terminal cleaning for resident rooms when fully vacated;
- q. failed to ensure that the appropriate personal protective equipment (PPE) was available and accessible for use by those who require use of PPE based on the Ontario Chief Medical Officer of Health's Directives and

current recommendations;

- r. failed to ensure physical distancing of staff, including during breaks and in staff areas;
- s. failed to ensure availability and accessibility of hand hygiene products throughout the Home for all persons;
- t. failed to ensure clear infection prevention and control signage and education for staff, visitors, and families, including outsourced workers and companies;
- u. failed to require that staff report any symptoms of COVID-19 to the Home and that they be required to immediately self-isolate at home and arrange for COVID-19 testing as soon as possible;
- v. failed to ensure appropriate infection prevention and control measures were taken when performing aerosol generating medical procedures (AGMPs) in the Home;
- w. failed to ensure that staff, visitors, residents, and families were current with information about the status of the outbreak at the Home;
- x. failed to comply with the measures specified by the District Health Unit's Medical Officer of Health;
- y. failed to communicate adequately or at all with families of residents;
- z. repeatedly failed to comply with public health guidance and directives

regarding: (1) outbreak planning; (2) supply, use, and access to PPE; (3) visitor, supplier, and service personnel screening; (4) resident isolation and testing, and; (5) employee testing and screening;

- aa. failed to implement an adequate pandemic response plan for residents and staff, or at all, when it was obligated to do so at common law and under contract and knew, or ought to have known, that such a plan was required to safeguard the health, safety, well-being, and dignity of the residents and staff;
- bb. when faced with a proliferation in COVID-19 cases, they failed to conduct even basic acute respiratory infection surveillance or to take standard droplet/contact precautions, let alone ensure the adequacy of PPE supplies or their use;
- cc. failed to communicate with the families of residents living at Roberta Place Long Term Care Home or staff regarding “presumptive positive” cases of COVID-19, in contravention of public health guidance and directives;
- dd. failed to conduct adequate visitor screening long after public guidance was in place requiring it;
- ee. failed to adequately supply or use PPE for visitors, residents, and staff in accordance with public health guidance and directives, including the Routine Practices and the various public health directives introduced in connection with the COVID-19 pandemic;

- ff. failed to equip visitors with adequate PPE despite knowledge of acute respiratory infection outbreaks, in breach of Directives 1, 3, and 5 and the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended;
- gg. failed to undertake adequate screening and testing measures for staff working in close contact with presumed, suspected, or confirmed cases of COVID-19;
- hh. allowed staff, employees, or contractors working at other facilities owned and/or operated by the Defendants to enter and work at Roberta Place Long Term Care Home;
- ii. failed to ensure that adequate staff were in the Roberta Place Long Term Care Home to provide the expected and proper standard of care to residents. Exacerbating the inadequate staffing, Roberta Place Long Term Care Home was locked down, preventing visitors who could check on the well-being of their loved ones. At the same time, Roberta Place Long Term Care Home failed to provide the expected and reasonable level of communication to families of residents; and
- jj. failed to take immediate and comprehensive steps to inform Public Health Ontario, the Chief Medical Officer, or the public of the scope of the infection with COVID-19.

42. For those Class Members who survive the outbreak of COVID-19 at the Roberta Place Long Term Care Home, they have endured harsh and intolerable treatment. They were locked down in their rooms, fearing for their safety and lives, knowing other

residents were dying around them and unable to visit with their loved ones and family members.

43. The Plaintiff George Head and the Class Members would not have sustained the injuries they did but for the above-pleaded failures of the Defendants. The above-pleaded failures of the Defendants, alone or in combination, caused or materially contributed to the resulting damages sustained by George Head and the Class Members.

44. By reason of the negligence of the Defendants, the Defendants are in breach of their duty of care to George Head and the Class Members.

GROSS NEGLIGENCE

45. The Defendants were negligent and failed in their duty to implement an appropriate standard of care as described by the above-pleaded failures. Without limiting the generality of the foregoing, the particulars of the Defendants' gross negligence include:

- a. they failed to rectify a pattern of mismanagement, misallocation of resources and staffing, and repeated violations and cited deficiencies of infection control and prevention requirements;
- b. they usurped resources and monetary compensation into their own pockets as opposed to putting in place PPE and preventative measures in anticipation of COVID-19;
- c. they were reckless, irresponsible, and neglectful of their responsibilities to

provide high quality and compassionate care to the residents and staff of Roberta Place Long Term Care Home; and

- d. they demonstrated an aggravated, flagrant, and careless pandemic response plan in response to the COVID-19 pandemic.

BREACH OF FIDUCIARY DUTY

46. Given the circumstances of the relationship between the Defendants and the Class Members, including, but not limited to, the statutory obligations, authority, and responsibilities of the Defendants, the Defendants undertook to act in the best interest of Class Members and to act in accordance with the duty of loyalty imposed on them.

47. The Defendants owed the Class, as vulnerable individuals in their care and control, fiduciary duties that included a duty to care for and protect them and to act in their best interests at all times. The Class Members had a reasonable expectation that the Defendants would act in their best interests with respect to operating and managing Roberta Place Long Term Care Home during the COVID-19 pandemic by virtue of the vulnerability of the Class Members resulting from their age, condition, the nature of the care provided by Roberta Place Long Term Care Home, and the Defendants' complete control over Roberta Place Long Term Care Home during the COVID-19 pandemic.

48. The Defendants breached their fiduciary duties to the Plaintiff and the Class by failing to ensure compliance with minimum standards. The Plaintiff and the Class Members were entitled to rely and did rely on the Defendants to their detriment to fulfill their fiduciary obligations.

BREACH OF CONTRACT

49. The Defendants entered into contracts with residents for the provision of care services at Roberta Place Long Term Care Home in which they agreed to provide adequate care and safety. The Defendants breached this contract by contravening the minimum standards for the provision of care during the COVID-19 pandemic.

VICARIOUS LIABILITY

50. The Plaintiffs and the Class plead that the Defendants can only act through their employees, directors, officers, and agents and are vicariously liable for their acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this claim to have been done by the Defendants were authorized, ordered, or done by the Defendants' employees, directors, officers, and agents while engaging in the management, direction, control, and transaction of the Defendants' businesses and are therefore acts and omissions for which the Defendants are vicariously liable.

DAMAGES

51. As a result of the injuries sustained by George Head and the surviving Class Members, they suffer from and will continue to suffer from cognitive and physical impairments. George Head and the Class Members have suffered and will continue to suffer pain, disability, limitation of movement and emotional difficulties, which will permanently impair their enjoyment of life.

52. As a result of the deaths of Class Members, their individual estates claim non-pecuniary and pecuniary damages.

53. As a result of the injuries sustained by George Head and the Class Members, both surviving and deceased, family members of the Plaintiff and Class Members have suffered severe emotional trauma and a loss of care, guidance, and companionship that they would have expected to receive from Class Members, and they claim damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, as amended.

54. Family members of the Class have also incurred medical, hospital, pharmaceutical, therapeutic, travel, and other extraordinary expenses and will continue to incur such expenses for the rest of the Class Members' dependence upon them.

55. Family members of the Class have provided, and will continue to provide, extraordinary nursing care and other services for the Class Members, and they claim a reasonable allowance for their loss of income or for the services they have provided pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, as amended.

56. As a result of the Defendants' negligence, breach of contract, and breach of fiduciary duty, the Plaintiff and Class Members are entitled to general damages, including damages pursuant to s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended for:

- a. Loss of life;
- b. Failure to provide contractually agreed-upon services;
- c. Pain, suffering, anxiety, and psychological trauma endured by Class Members who had COVID-19 having gone without adequate care;
- d. Emotional distress and psychological injuries suffered by family members as a reasonably foreseeable consequence of the Defendants' negligence,

breach of contract, and breach of fiduciary duty;

- e. Funeral expenses;
- f. Loss of guidance, care, and companionship;
- g. Hospital, medical, nursing, medication, and other out-of-pocket expenses;
and
- h. Costs and damage resulting to Class Members who had to remove residents from Roberta Place Long Term Care Home, including the resulting psychological stress and anxiety.

57. The Plaintiffs plead and rely upon the provisions of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, as amended; *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; *Family Law Act*, R.S.O. 1990, c. F.3, as amended; *Long-Term Care Homes Act*, 2007, S.O. 2007, c. 8, as amended; *Negligence Act*, R.S.O. 1990, c. N.1, as amended; *Nursing Act*, 1991, S.O. 1991, c. 32, as amended; *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended; *Public Hospitals Act*, R.S.O. 1990, c. P.40, as amended; the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, as amended; the *Retirement Homes Act*, 2010, S.O. 2010, c. 11, as amended; and the *Trustee Act*, R.S.O. 1990, c. T.23, as amended.

58. The Plaintiff George Head and the Class suffered losses or damages as a result of the Defendants' conduct. It is appropriate that these damages be assessed on an aggregate basis under section 24 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, as amended.

PUNITIVE DAMAGES

59. Through their collective mismanagement of the COVID-19 pandemic, the Defendants have displayed wanton disregard for both residents and their families – some of the most vulnerable members of our society. The wanton failure to protect the lives and well-being of some of the most vulnerable members of our society and their families shown by the Defendants is a marked departure from the standards expected of Ontario retirement and long-term care facilities in response to an acute respiratory infection outbreak and demonstrates callous and reprehensible behaviour deserving of an award of punitive damages.

60. Through their collective mismanagement of the COVID-19 pandemic, the Defendants have displayed wanton disregard for the staff working at Roberta Place Long Term Care Home. The wanton failure to protect the lives and well-being of its staff, and by extension, their families, is a marked departure from the standards expected of Ontario retirement and long-term care facilities in response to an acute respiratory infection outbreak and demonstrates callous and reprehensible behaviour deserving of an award of punitive damages.

AGGRAVATED DAMAGES

61. Through their collective mismanagement of the COVID-19 pandemic, the conduct of the Defendants has caused the Plaintiffs and the Class Members intangible injuries including pain, anguish, grief, humiliation, and loss of faith in friends, colleagues, and health care providers. The wanton failure to protect the lives and well-being of its staff, and by extension, their families, is a marked departure from the standards

expected of Ontario retirement and long-term care facilities in response to an acute respiratory infection outbreak, aggravating the damages to the Plaintiffs and Class Members. The Defendants' culpable acts (or failures to act) support an award of aggravated damages.

MENTAL DISTRESS DAMAGES FOR BREACH OF CONTRACT

62. As a result of the aforementioned breaches, the Defendants caused the Plaintiffs and Class Members psychological, emotional, and physical harm, including anguish, humiliation, and serious and prolonged mental distress. As a result of the Defendants' wanton failure to protect the lives and well-being of its staff, and by extension, their families, the Plaintiffs and Class Members felt embarrassed, utterly humiliated, and overwhelmed by a deep sense of personal guilt for not being able to intervene and help their loved ones residing at Roberta Place Long Term Care Home during the COVID-19 pandemic, deserving of an award of mental distress damages for breach of contract.

WAIVER OF TORT

63. In the alternative, the Plaintiffs and the Class claim disgorgement of the benefits received by the Defendants on the grounds of waiver of tort.

64. The Defendants committed multiple wrongs as described above. These wrongs conferred benefits on the Defendants, in the form of additional revenues, that they would not have acquired but for their wrongdoing.

65. The misconduct was motivated by the Defendants' desire to maximize the amount of profits they could reap from Class Members, who were vulnerable to the conduct of

the Defendants.

66. There is no legitimate justification for allowing the Defendants to retain the profits derived from their wrongdoing. An award of compensatory damages against the Defendants would be an inadequate remedy and would fail to deter the type of misconduct exhibited by the Defendants.

67. It is appropriate that disgorgement of profits be assessed on an aggregate basis for the Class.

PLACE OF TRIAL

68. The Plaintiffs and the Class propose that this action be tried in the City of Barrie, in the Province of Ontario.

Date: January 29, 2021

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Court File No.:

GEORGE HEAD by his Litigation Guardian Marcella Lambie et al. - and - 859530 ONTARIO INC. et al.

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Barrie

STATEMENT OF CLAIM

Proceeding under the
Class Proceedings Act, 1992, S.O. 1992, c. 6

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