

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPT.  
C.A. No.

PATRICIA MARTIN, TERRY YOUNG,  
DONNA MURPHEY,

Plaintiffs,

VS.

GABRIEL CARE, LLC d/b/a GABRIEL  
HOUSE ASSISTED LIVING  
RESIDENCE, DENNIS A. ETZKORN,  
FIRE SYSTEMS, INC.,

Defendants.

COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiffs, PATRICIA MARTIN (hereinafter “MARTIN”), TERRY YOUNG (hereinafter “YOUNG”), and DONNA MURPHEY (hereinafter “MURPHEY”) by and through undersigned counsel and for the causes of action pled herein against Defendants, GABRIEL CARE, LLC d/b/a GABRIEL HOUSE ASSISTED LIVING RESIDENCE (hereinafter “GABRIEL HOUSE”) DENNIS A. ETZKORN (hereinafter “ETZKORN”), and FIRE SYSTEMS, INC (hereinafter “FIRE SYSTEMS”) and state and allege the following:

INTRODUCTION

1. This is a civil action for bodily injury and property damage to multiple Plaintiffs resulting from the negligence of the Defendants, their violations of statutory and regulatory duties, and disregard for the residents receiving care, which caused and contributed to the occurrence of a dangerous, destructive, and deadly fire at an assisted living facility in Fall River, Massachusetts on July 13, 2025.

2. The ensuing investigation of this fire revealed egregious violations by the facility; its agents, representatives, and employees; and its provider of fire alarm and life safety systems.
3. The fire further exposed widespread failures of building equipment and systems, including but not limited to mechanical, early warning, life safety, fire suppression, and emergency egress, which individually and collectively constituted violations of state codes, licensing regulations, industry standards, and the standard of care.

### JURISDICTION

4. Venue is proper in this Court by virtue of Massachusetts Rules of Civil Procedure whereas the subject incident occurred at 261 Oliver Street, Fall River, Massachusetts 02724 (hereinafter "Property"). At all times material hereto, the Defendants conducted substantial, and not isolated, business in Bristol County, Massachusetts.
5. This Court has jurisdiction over civil matters seeking damages in excess of fifty thousand dollars (\$50,000). Plaintiffs, individually and collectively, seek damages in excess of the jurisdictional limits of the Court to compensate for losses and injuries sustained and to deter this type of egregious conduct from occurring in the future.
6. There is no Federal question and there is incomplete diversity of citizenship due to the inclusion of Massachusetts resident Defendants. The Plaintiffs expressly disclaim every claim arising under the Constitution, treaties, or laws of the United States (including any claim arising from an act or omission on a federal enclave, or of any officer of the U.S. or any agency or person acting under him occurring under color of such office). No claim of admiralty or maritime law is raised.

### PARTIES

7. At all times material hereto, MARTIN was an adult resident of Bristol County, Massachusetts, invitee and resident receiving care at Gabriel House at Property.
8. At all times material hereto, YOUNG was an adult resident of Bristol County, Massachusetts, invitee and resident receiving care at Gabriel House at Property.
9. At all times material hereto, MURPHEY was an adult resident of Bristol County, Massachusetts, invitee and resident receiving care at Gabriel House at Property. MURPHEY

was not present at the time of the fire. After learning of the fire and the injuries / deaths of close friends, MURPHEY suffered severe emotional distress and property damage.

10. For the purposes of this Complaint, “residents receiving care” shall include all individuals who were contractually eligible for residence and/or care at GABRIEL HOUSE on July 13, 2025, including but not limited to Plaintiffs MARTIN, YOUNG, and MURPHEY.
11. At all times material hereto, GABRIEL HOUSE was a Domestic Limited Liability Company, situated in the State of Massachusetts, and doing business at Property. GABRIEL HOUSE conducted business and held itself out as Gabriel House Assisted Living Residence, offering residential housing and care to an aging population, specifically enabling individuals to “live independently while feeling secure in the knowledge that help is there when you need it”. GABRIEL HOUSE boasted on its website that its “staff is awake and available 24 hours a day. If an emergency occurs, no matter the time, there will be someone ready to help.”
12. At all times material hereto, ETZKORN was an adult resident of Massachusetts and was the manager, signatory, and registered agent for GABRIEL HOUSE. ETZKORN had an address of 10 Trailside Rd, Medfield, Massachusetts 02052. Upon information and belief, ETZKORN, as manager, was charged with the business operations of GABRIEL HOUSE. As such, ETZKORN was responsible for implementing policies, procedures, protocols, staffing determinations, resource allocations.
13. At all times material hereto, FIRE SYSTEMS was a Domestic Profit Corporation, situated in the State of Massachusetts, and doing business at 955 Reed Road, North Dartmouth, Massachusetts 02747. Upon information and belief, FIRE SYSTEMS was the provider of fire alarms and life safety systems for GABRIEL HOUSE, inspected GABRIEL HOUSE to ensure operation and compliance of its fire alarms and life safety systems, and maintained said equipment for the benefit of GABRIEL HOUSE and its residents receiving care.
14. At all times material hereto, GABRIEL HOUSE was acting individually and by and through its employees, actual agents or apparent agents, or representatives and was responsible for the operation, management, care, and maintenance of Property.
15. At all times material hereto, GABRIEL HOUSE was acting individually and by and through its employees, actual agents or apparent agents, or representatives and was responsible for the whereabouts, health, safety, physical and emotional well-being of invitees and residents receiving care, while on Property.

16. At all times material hereto, ETZKORN was individually compensated as the manager, signatory, and registered agent for GABRIEL HOUSE and was the employee, actual agent or apparent agent, or representative of GABRIEL HOUSE. ETZKORN and GABRIEL HOUSE acted within the course and scope and authority of that relationship.
17. At all times material hereto, ETZKORN was acting individually and by and through employees, actual agents or apparent agents, or representatives and was responsible for the operation, management, care, and maintenance of Property as well as the care and maintenance of the residents receiving care at GABRIEL HOUSE.
18. At all times material hereto, FIRE SYSTEMS was acting individually and by and through employees, actual agents or apparent agents, or representatives in the installation, inspection, and maintenance of fire alarms and life safety systems at GABRIEL HOUSE and at the Property. To that end, FIRE SYSTEMS was contractually obligated and assumed a duty to ensure the operation, management, care, and maintenance of the Property as well as the reasonable safety of the residents receiving care at GABRIEL HOUSE.
19. At all times material hereto, FIRE SYSTEMS was individually compensated by GABRIEL HOUSE and/or ETZKORN and was the employee, actual agent or apparent agent, or representative of GABRIEL HOUSE and/or ETZKORN. GABRIEL HOUSE and/or ETZKORN and FIRE SYSTEMS acted within the course and scope and authority of that relationship.

#### FACTS

20. On or about July 13, 2025, a fire occurred at GABRIEL HOUSE in which 10 residents receiving care were killed and at least 30 more were injured. At the time of the fire, GABRIEL HOUSE was home to 70 residents receiving care. Upon information and belief, there were 2 staff members on-shift when the fire occurred.
21. According to District Attorney Thomas Quinn, III, the fire at GABRIEL HOUSE represented the greatest loss of life to fire in Massachusetts in more than 40 years. It was one of the worst fire-related disasters in the state's modern history and an unprecedented tragedy for the community of Fall River.
22. State Fire Marshal Jon M. Davine investigated and released preliminary findings, ruling the cause of the fire "accidental" and "undetermined." The State Fire Marshal has opined that the

fire was more likely than not the result of careless smoking activities or the failure of an oxygen concentrator on the second floor of the Property. State Fire Marshal Davine believes that the presence of medical oxygen in the area of origin and in other nearby rooms played a significant role in the fire's rapid spread.

23. At all times material hereto, Defendants knew and reasonably should have known that many of the residents receiving care at GABRIEL HOUSE were being administered oxygen.
24. At all times material hereto, Defendants knew and reasonably should have known that many of the residents receiving care at GABRIEL HOUSE smoked cigarettes, and even smoked cigarettes while being administered oxygen.
25. At all times material hereto, Defendants knew or reasonably should have known that smoking cigarettes while being administered oxygen constitutes an increased risk of fires and explosions.
26. At all times material hereto, the residents receiving care at GABRIEL HOUSE were suffering the effects of advanced age, physical infirmity, and/or medical conditions which required additional attention and care, including assistance with their mobility. The residents receiving care were unable to move quickly and were limited in their respective abilities to respond to emergency conditions.
27. At all times material hereto, Defendants knew or reasonably should have known of the limitations possessed by the residents receiving care at GABRIEL HOUSE.
28. At all times material hereto, the GABRIEL HOUSE AND ETZKORN had the duty and the authority, discretion, and responsibility for the day-to-day operation and management of GABRIEL HOUSE, including those matters related to the retention, training, education, supervision and termination of agents, representatives, and employees in furtherance of the business at the Property.
29. At all times material hereto, Defendants had a non-delegable duty and responsibility to ensure that the Property was reasonably safe for its foreseeable and intended uses and to further ensure residents receiving care were also reasonably safe from foreseeable harm.
30. At all times material hereto, Defendants were required to advise, discuss, inform, counsel, protect, and warn residents receiving care from dangerous conditions on the Property, including fire and safety hazards.

31. At all times material hereto, Defendants owed the highest duty of care to residents receiving care, and therefore Defendants were required to conduct regular inspections of the Property, provide warnings, and correct any dangerous conditions before those conditions were able to result in injury/death. Defendants were required to repair and/or replace any missing, broken, or defective building equipment and systems, including but not limited to mechanical, early warning, life safety, fire extinguishing and fire suppression, and emergency egress (i.e. elevators, fire alarms, smoke detectors, fire doors, fire sprinklers, fire pumps, fire extinguishing devices and fire suppression, and emergency egress signs and routes), each of which were designed and intended to allow residents receiving care to exit their residential units and the Property in the event of an emergency.
32. At all times material hereto, Defendants were required to adhere to legislation, ordinances, building codes, housing codes, fire codes, safety codes, and licensing regulations, policies, procedures, industry best practices to ensure the proper inspection, installation, maintenance, testing, removal, and/or repair of building equipment and systems, including but not limited to mechanical, early warning, life safety, fire extinguishing devices and fire suppression, and emergency egress (i.e. elevators, fire alarms, smoke detectors, fire doors, fire sprinklers, fire pumps, fire extinguishing device and fire suppression system, and emergency egress signs and routes), each of which were designed and intended to allow residents receiving care to exit their residential units and the Property in the event of an emergency.
33. At all times material hereto, Defendants were required to comply with applicable legislation, ordinances, building codes, housing codes, fire codes, safety codes, and licensing regulations, policies, procedures, industry best practices and the standard of care.
34. At all times material hereto, the GABRIEL HOUSE and ETZKORN permitted the installation of window air conditioners that were too large for the windows in which they were installed, and were violative of code requirements, preventing safe egress and impeding the evacuation of the building in emergency conditions.
35. At all times material hereto, GABRIEL HOUSE and ETZKORN were required to engage in fire drills to practice safe exit strategies for the residents receiving care at the Property.
36. At all times material hereto, staff were untrained, unprepared, and unequipped to carry out an emergency evacuation.

37. At all times material hereto, GABRIEL HOUSE and ETZKORN were required by 65 CMR 12.04 to have an Emergency Preparedness Plan and Reporting Requirements that provided an evacuation strategy for immediate evacuations, for such events as fires or gas leaks. The plan was required to address the physical and cognitive needs of residents receiving care; provide for the conducting of annual simulated evacuation drills and rehearsals for all shifts; and provide staff training to ensure disaster and emergency preparedness by orienting new employees at the time of employment, acquainting each such employee with the emergency preparedness plan, and periodically reviewing the plan with all employees to make certain that all personnel were trained to perform the tasks assigned to them.
38. Upon information and belief, GABRIEL HOUSE and ETZKORN did not have an Emergency Preparedness Plan and further failed to follow the Reporting Requirements of 65 CMR 12.04, in that employees were not trained, acquainted, or drilled to ensure disaster and emergency preparedness. Residents receiving care were not individually assessed. Fire drills were not conducted by or among staff. And, staff were neither assigned tasks under the plan, nor were staff required to anticipate and prepare for the needs of residents receiving care, in the event of an emergency. The failures of GABRIEL HOUSE and ETZKORN are a direct violation of state safety regulations. According to Jenn Marley, a certified nursing assistant at GABRIEL HOUSE (2018-2019), there were no fire drills during her time of employment at the Property.
39. The GABRIEL HOUSE and ETZKORN received financial benefits from the residents receiving care. In exchange, GABRIEL HOUSE and ETZKORN were required to ensure that GABRIEL HOUSE, the Property, and the residents receiving care were reasonably safe from foreseeable harm.
40. Upon information and belief, the Defendants and the Property violated the rules and regulations of the State of Massachusetts and its Executive Office of Elder Affairs that certifies assisted living facilities and ensures that each facility meet specific operating standards as outlined in 651 CMR 12.00 *et seq*, including but not limited to the general requirements for assisted living residences, covering areas such as service plans, quality assurance, and emergency preparedness that are contained in 651 CMR 12.04.
41. Upon information and belief, the Defendants failed to follow the standards associated with NFPA 99, *Health Care Facilities Code* and/or had deficiencies in emergency planning, training, and response; failed to track residents and staff during an emergency; failed to enact and deploy

emergency communications plans; and failed to reasonably develop an emergency preparedness plan, training, and testing protocol and failed to deploy same on the date of the subject incident.

42. At all times material hereto, GABRIEL HOUSE and the Property had a broken elevator that had not been functional for more than eight (8) months. Defendants were aware that the elevator was broken and failed to take appropriate steps to repair it, despite receiving multiple complaints from residents receiving care, family of the residents receiving care, and the agents, representatives, and employees of Defendants.
43. Upon information and belief, the Defendants and the Property violated Massachusetts regulations governing elevator construction, installation, operation, maintenance, alteration, and repair as enacted by The Board of Elevator Regulations within the Division of Occupational Licensure including, but not limited to those provisions codified in M.G.L. c. 143 and 524 CMR, including 524 CMR 35.00 which specifically incorporates the ASME A17.1 safety code, and 521 CMR 28.00 which provides accessibility requirements for elevators, ensuring they are usable by individuals with disabilities.
44. At all times material hereto, residents receiving care did not have early warning of fire and impending danger from smoke detectors or fire alarms installed and maintained in the proper location, number and type, and therefore did not have an opportunity for early intervention.
45. At all times material hereto, FIRE SYSTEMS was independently contracted to install, inspect, and maintain the fire alarms and life safety systems at GABRIEL HOUSE. Said equipment was meant to provide early warning of emerging dangers on the Property and give residents receiving care the greatest opportunity to survive the dangerous effects of fire by the activation of an alarm that sounds several minutes before smoke obscures the available paths of egress.
46. At all times material hereto, residents receiving care were not able to egress from their residential units, and were trapped, as a result of corridors filled with thick black smoke that prevented residents receiving care from safely egressing their residential units and the Property.
47. Upon information and belief, the equipment installed, inspected, maintained, and certified by FIRE SYSTEMS failed to provide reasonable notice and warning of the subject fire.
48. At all times material hereto, the fire panel was improperly installed and maintained, and therefore was not operational at the time of the subject fire.



49. Upon information and belief, the Defendants and the Property violated Massachusetts regulations governing fire panels and the fire alarm systems in buildings as found in the Massachusetts Comprehensive Fire Safety Code (527 CMR) and the Massachusetts Building Code (780 CMR), which incorporates that International Building Code, and the Massachusetts Fire Code (527 CMR, 1.00), incorporating NFPA 1, specific provisions of NFPA 101, and NFPA 72.
50. Upon information and belief, the Defendants and the Property violated Massachusetts regulations governing fire sprinklers as found in the Massachusetts General Laws, the Massachusetts Building Code, and the Massachusetts Fire Code (527 CMR 1.00), incorporating NFPA 1, specific provisions of NFPA 101 and NFPA 13.
51. Upon information and belief, FIRE SYSTEMS inspected and certified in good working order the fire sprinklers and fire pump a mere 5 days before the occurrence of the subject fire.
52. At all times material hereto, the fire sprinklers were improperly installed and maintained, and therefore were not operational at the time of the subject fire.
53. At all times material hereto, the fire pump was improperly installed and maintained, and therefore was not operational at the time of the subject fire.
54. At all times material hereto, residents receiving care did not have access to a properly installed, mounted, and/or maintained fire extinguishing device / fire suppression system.
55. Upon information and belief, the Defendants and the Property violated Massachusetts regulations governing fire pumps the Massachusetts Building Code (780 CMR), which incorporates that International Building Code, and the Massachusetts Fire Code (527 CMR 1.00), incorporating NFPA 1, specific provisions of NFPA 101, and NFPA 20 and 25.
56. At all times material hereto, GABRIEL HOUSE and the Property did not have reasonable or adequate emergency egress signs and routes.
57. At all times material hereto, the Defendants exercised absolute control over the maintenance, upkeep, inspection, and/or repair of GABRIEL HOUSE and the Property. As such, the Defendants knew or reasonably should have known of the existing fire and safety hazards at the Property.
58. At all times material hereto, Defendants were required to make repairs and do whatever was reasonably necessary to put and keep GABRIEL HOUSE, the Property, its residential units, and common areas in a safe, fit, and habitable condition, including removing, preventing, or

warning of conditions that cause, create, or contribute to fire and explosive hazards or prevent early warning, early intervention, and safe egress for residents receiving care.

59. At all times material hereto, GABRIEL HOUSE and ETZKORN exercised absolute control over the creation and enforcement of policies and procedures that would ensure the reasonable safety and security of residents receiving care at GABRIEL HOUSE and the Property.
60. At all times material hereto, GABRIEL HOUSE and ETZKORN relied upon FIRE SYSTEMS for instruction, education, and training in the use of fire alarms and life safety systems. GABRIEL HOUSE and ETZKORN also relied upon FIRE SYSTEMS to ensure the reasonable safety of the Property, GABRIEL HOUSE, and the residents receiving care.
61. Upon information and belief, the subject fire and the resulting property damage, injuries, and deaths were caused, in whole or in part, by the Defendants' individual and collective negligence, violations of statutory and regulatory duties, and disregard for the residents receiving care.
62. Plaintiffs did not cause or contribute to the occurrence of the fire and did not cause or contribute to their injuries.
63. As a result of the Defendants' actions and failures to act with reasonable care, MARTIN was forced to endure pain and suffering, mental anguish, loss of the capacity for the enjoyment of life, and the expense of hospitalization, medical and nursing care and treatment, property damage and loss, costs associated with relocation. The physical injuries to MARTIN are on-going and permanent.
64. As a result of the Defendants' actions and failures to act with reasonable care, YOUNG was forced to endure pain and suffering, mental anguish, loss of the capacity for the enjoyment of life, and the expense of hospitalization, medical and nursing care and treatment, property damage and loss, costs associated with relocation. The physical injuries to YOUNG are on-going and permanent.
65. As a result of the Defendants' actions and failures to act with reasonable care, MURPHEY was forced to endure emotional pain and suffering, mental anguish, loss of the capacity for the enjoyment of life, and the expense of hospitalization, medical and nursing care and treatment, property damage and loss, costs associated with relocation. The physical injuries to MURPHEY are on-going and permanent.

CAUSES OF ACTION

COUNT I — NEGLIGENCE – GABRIEL HOUSE

66. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65.
67. Defendant owed a non-delegable duty to provide the care and services appropriate to the needs of residents receiving care.
68. Defendant negligently failed to adhere to the appropriate standard of care with respect to the following:
- a. the operation, management, care, and maintenance of GABRIEL HOUSE and the Property;
  - b. providing care and services to residents receiving care;
  - c. ensuring the safety and well-being of residents receiving care;
  - d. monitoring the whereabouts and activities of residents receiving care.
69. Defendant owed a duty of care to Plaintiffs to ensure the premises were safe and to provide adequate life safety systems. Defendant breached that duty by failing to maintain fire suppression systems, train staff, and provide a safe means of egress.
70. Defendant breached its duty to exercise reasonable care with regard to residents receiving care in the following manner, including but not limited to, the following specific acts or omissions:
- a. Defendant negligently installed, inspected, maintained, and certified building equipment and systems, including but not limited to mechanical, early warning, life safety, fire extinguishing and fire suppression, and emergency egress (i.e. elevators, fire alarms, smoke detectors, fire doors, fire sprinklers, fire pumps, fire extinguishing devices and fire suppression, and emergency egress signs and routes), each of which were designed and intended to allow residents receiving care to exit their residential units and the Property in the event of an emergency.
  - b. Defendant negligently advised, discussed, informed, counseled, protected, and warned residents receiving care from dangerous conditions on the Property, including fire and safety hazards;
  - c. Defendant negligently failed to adhere to legislation, ordinances, building codes, housing codes, fire codes, safety codes, and licensing regulations;

- d. Defendant negligently failed to enact and enforce policies, procedures, and industry best practices for the benefit of residents receiving care;
- e. Defendant negligently selected, hired, employed, educated, and trained its agents, employees, and representatives;
- f. Defendant negligently failed to educate, train, and warn its agents, employees, and representatives regarding the industry-wide risk associated with smoking while receiving oxygen therapy and/or in proximity to oxygen therapy;
- c. Defendant negligently failed to educate, train, and warn its residents receiving care and the families of residents receiving care regarding the industry-wide risk associated with smoking while receiving oxygen therapy and/or in proximity to oxygen therapy;
- d. Defendant negligently failed to adopt, provide, and ensure strict compliance with safety protocols and standards, including a smoking policy, for its residents receiving care, agents, employees, and representatives, as it relates to the use of oxygen therapy and/or other flammable, explosive gases;
- e. Defendant negligently failed to adopt, provide, and ensure strict compliance with safety protocols and standards, including a smoking policy, for its residents receiving care and the families of residents receiving care, as it relates to the use of oxygen therapy and/or other flammable, explosive gases;
- f. Before the occurrence of the subject fire, Defendant had actual and constructive knowledge of other incidents involving smoking within GABRIEL HOUSE, and on or about the Property, while residents receiving care were being administered or in close proximity to oxygen therapy;
- g. Defendant negligently failed enforce meaningful punishment for residents receiving care who were found smoking while being administered oxygen, including but not limited to restricting and/or removing residents' ability to smoke on the Property;
- h. Defendant negligently failed to provide appropriate supervision and monitoring of the residents receiving care for safe smoking practices;
- i. Defendant negligently failed to follow regulations, laws, ordinances, and internal policies and procedures designed to ensure the safety, protection, and well-being of residents receiving care;

j. Defendant negligently failed to inspect and maintain equipment related to the administration of oxygen for all residents receiving care.

71. Defendant is also responsible for the acts of its agents, including but not limited to ETZKORN, each of whom were acting in the course and scope of their employment and in furtherance of Defendant's interests.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT II – NEGLIGENCE PER SE – GABRIEL HOUSE

72. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65 and 67-71.

73. Pursuant to the rules and regulations of the State of Massachusetts including but not limited to the Massachusetts General Laws, the Executive Office of Elder Affairs (651 CMR 12.00 *et seq*), The Board of Elevator Regulations within the Division of Occupational Licensure (M.G.L. c. 143 and 524 CMR, including 524 CMR 35.00 which specifically incorporates the ASME A17.1, and 521 CMR 28.00), Massachusetts Comprehensive Fire Safety Code (527 CMR), the Massachusetts Building Code (780 CMR, which incorporates that International Building Code), NFPA 1, 13, 20, 25, 72, 99, and 101, Defendant owed a duty to construct, equip, maintain, and use the Property in accordance with the applicable laws, ordinances and codes, so as to protect residential receiving care and invitees against dangerous conditions, unreasonable injury, and death.

74. The purpose of the laws, ordinances, and codes is to protect residents receiving care and invitees from the harmful effects of residential fires. Residents receiving care were members of the class of persons protected by these rules, regulations, laws, ordinances, codes, and standards.

75. Defendant knew or should have known that GABRIEL HOUSE and the Property were not constructed, equipped, maintained, and/or used in a manner that would protect residents receiving care and invitees, from the harmful effects of fire and that GABRIEL HOUSE and

the Property were in violation of applicable rules, regulations, laws, ordinances, codes, and standards.

76. By violating the governing rules, regulations, laws, ordinances, codes, and standards, Defendant breached its statutory duties of care to residents receiving care.

77. Defendant's breach(es) of these duties was (were) the direct and proximate cause of the injury and death to the residents receiving care.

78. As a result of Defendant's breaches, wrongful acts, neglect, omissions, failures and/or default the residents receiving care are entitled to damages.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

### COUNT III — BREACH OF FIDUCIARY & CONTRACTUAL DUTIES – GABRIEL HOUSE

79. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65 and 67-71, and 73-78.

80. A contract existed between Defendant and residents receiving care, entitling Plaintiffs to certain conditions of residence and care, provided by GABRIEL HOUSE.

81. Defendant owed fiduciary and contractual obligations to residents receiving care.

82. By causing, creating, and allowing the persistence of conditions detrimental to the residents receiving care, which resulted in a dangerous, destructive, and deadly fire at GABRIEL HOUSE, Defendant failed to act in the best interests of its residents receiving care, thereby breached its fiduciary duty, and further breached its contractual obligations to the residents receiving care.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT IV – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS – GABRIEL HOUSE

83. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65 and 67-71, 73-78 and 80-82.
84. Defendant's actions and/or inactions were intentional, willful, wanton, grossly careless, indifferent, reckless, and/or negligent, so as to go beyond all possible bounds of decency, and said conduct resulted in a fire which caused physical symptoms of severe emotional distress, including anxiety, distress, fear, aggravation, and inconvenience.
85. Even for those that were not present at the time of the fire suffered physical symptoms of severe emotional distress as a result of the close, personal relationship that existed between such individuals and those that were injured / killed by the fire.
86. Defendant should have realized that their conduct involved an unreasonable risk of causing the severe emotional distress to Plaintiff.
87. Plaintiffs' severe emotional distress and mental injury are medically diagnosable and medically significant.
88. The Defendant's acts and/or inactions constitute the direct, proximate and/or substantial contributing cause of the extreme mental and emotional distress suffered by, and continued to be suffered by the Plaintiffs, and such damages were reasonably foreseeable consequences of the Defendant's acts.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT V — NEGLIGENCE – ETZKORN

89. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65.
90. Defendant owed a non-delegable duty to provide the care and services appropriate to the needs of residents receiving care.
91. Defendant was grossly negligent in his operation of GABRIEL HOUSE, and further failed to adhere to the appropriate standard of care with respect to the following:

- b. the operation, management, care, and maintenance of GABRIEL HOUSE and the Property;
- c. providing care and services to residents receiving care;
- d. ensuring the safety and well-being of residents receiving care;
- e. monitoring the whereabouts and activities of residents receiving care.

92. Defendant owed a duty of care to Plaintiffs to ensure the premises were safe and to provide adequate life safety systems. Defendant breached that duty by failing to maintain fire suppression systems, train staff, and provide a safe means of egress. At the time of the fire, GABRIEL HOUSE was terribly under-staffed, having only 2 employees to assist 70 residents receiving care.

93. Defendant breached his duty to exercise reasonable care with regard to residents receiving care in the following manner, including but not limited to, the following specific acts or omissions:

- g. Defendant negligently installed, inspected, maintained, and certified building equipment and systems, including but not limited to mechanical, early warning, life safety, fire extinguishing and fire suppression, and emergency egress (i.e. elevators, fire alarms, smoke detectors, fire doors, fire sprinklers, fire pumps, fire extinguishing devices and fire suppression, and emergency egress signs and routes), each of which were designed and intended to allow residents receiving care to exit their residential units and the Property in the event of an emergency.
- h. Defendant negligently advised, discussed, informed, counseled, protected, and warned residents receiving care regarding dangerous conditions on the Property, including fire and safety hazards;
- i. Defendant negligently failed to adhere to legislation, ordinances, building codes, housing codes, fire codes, safety codes, and licensing regulations;
- j. Defendant negligently failed to enact and enforce policies, procedures, and industry best practices for the benefit of residents receiving care;
- k. Defendant negligently selected, hired, employed, educated, and trained its agents, employees, and representatives, and further failed to ensure that GABRIEL HOUSE was appropriately staffed with a reasonable number of trained employees, willing to assist residents receiving care in the event of an emergency;



- l. Defendant negligently failed to educate, train, and warn its agents, employees, and representatives regarding the industry-wide risk associated with smoking while receiving oxygen therapy and/or in proximity to oxygen therapy;
- d. Defendant negligently failed to educate, train, and warn its residents receiving care and the families of residents receiving care regarding the industry-wide risk associated with smoking while receiving oxygen therapy and/or in proximity to oxygen therapy;
- e. Defendant negligently failed to adopt, provide, and ensure strict compliance with safety protocols and standards, including a smoking policy, for its residents receiving care, agents, employees, and representatives, as it relates to the use of oxygen therapy and/or other flammable, explosive gases;
- f. Defendant negligently failed to adopt, provide, and ensure strict compliance with safety protocols and standards, including a smoking policy, for its residents receiving care and the families of residents receiving care, as it relates to the use of oxygen therapy and/or other flammable, explosive gases;
- g. Before the occurrence of the subject fire, Defendant had actual and constructive knowledge of other incidents involving smoking within GABRIEL HOUSE, and on or about the Property, while residents receiving care were being administered or in close proximity to oxygen therapy and permitted residents receiving care to remain on the premises after being identified as smoking while being administered oxygen, the sanction for such behavior being relatively minor compared to the elevated risk of injury and/or death;
- h. Defendant negligently failed enforce meaningful punishment for residents receiving care who were found smoking while being administered oxygen, including but not limited to restricting and/or removing residents' ability to smoke on the Property;
- k. Defendant negligently failed to provide appropriate supervision and monitoring of the residents receiving care for safe smoking practices;
- l. Defendant negligently failed to follow regulations, laws, ordinances, and internal policies and procedures designed to ensure the safety, protection, and well-being of residents receiving care;
- m. Defendant negligently failed to inspect and maintain equipment related to the administration of oxygen for all residents receiving care.

94. Defendant is also responsible for the acts of his agents, each of whom were acting in the course and scope of their employment and in furtherance of Defendant's interests.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT VI – NEGLIGENCE PER SE – ETZKORN

95. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65 and 90-94.

96. Pursuant to the rules and regulations of the State of Massachusetts including but not limited to the Massachusetts General Laws, the Executive Office of Elder Affairs (651 CMR 12.00 *et seq*), The Board of Elevator Regulations within the Division of Occupational Licensure (M.G.L. c. 143 and 524 CMR, including 524 CMR 35.00 which specifically incorporates the ASME A17.1, and 521 CMR 28.00), Massachusetts Comprehensive Fire Safety Code (527 CMR), the Massachusetts Building Code (780 CMR, which incorporates that International Building Code), NFPA 1, 13, 20, 25, 72, 99, and 101, Defendant owed a duty to construct, equip, maintain, and use the Property in accordance with the applicable laws, ordinances and codes, so as to protect residential receiving care and invitees against dangerous conditions, unreasonable injury, and death.

97. The purpose of the laws, ordinances, and codes is to protect residents receiving care and invitees from the harmful effects of residential fires. Residents receiving care were members of the class of persons protected by these rules, regulations, laws, ordinances, codes, and standards.

98. Defendant knew or should have known that GABRIEL HOUSE and the Property were not constructed, equipped, maintained, and/or used in a manner that would protect residents receiving care and invitees, from the harmful effects of fire and that GABRIEL HOUSE and the Property were in violation of applicable rules, regulations, laws, ordinances, codes, and standards.

99. By violating the governing rules, regulations, laws, ordinances, codes, and standards, Defendant breached its statutory duties of care to residents receiving care.

100. Defendant's breach(es) of these duties was (were) the direct and proximate cause of the injury and death to the residents receiving care.

101. As a result of Defendant's breaches, wrongful acts, neglect, omissions, failures and/or default the residents receiving care are entitled to damages.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT VII — BREACH OF FIDUCIARY & CONTRACTUAL DUTIES – ETZKORN

102. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65, 90-94, and 96-101.

103. A contract existed between Defendant and residents receiving care, entitling Plaintiffs to certain conditions of residence and care, provided by GABRIEL HOUSE.

104. Defendant owed fiduciary and contractual obligations to residents receiving care.

105. By causing, creating, and allowing the persistence of conditions detrimental to the residents receiving care, which resulted in a dangerous, destructive, and deadly fire at GABRIEL HOUSE, Defendant failed to act in the best interests of its residents receiving care, thereby breached its fiduciary duty, and further breached its contractual obligations to the residents receiving care. Defendant was grossly negligent in his operation and management of GABRIEL HOUSE, his actions characterized by reckless disregard for the safety of the residents receiving care. Defendants actions were substantially and appreciably higher in magnitude than ordinary negligence. The lengthy list of violations mechanical and system failures described herein, combined with the understaffing of the facility and lack of training by and for existing employees amounts to a conscious disregard for those that rely upon GABRIEL HOUSE and ETZKORN for care.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT VIII – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS – ETZKORN

106. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65, 90-94, 96-101, and 103-105.
107. Defendant's actions and/or inactions were intentional, willful, wanton, grossly careless, indifferent, reckless, and/or negligent, so as to go beyond all possible bounds of decency, and said conduct resulted in a fire which caused physical symptoms of severe emotional distress, including anxiety, distress, fear, aggravation, and inconvenience.
108. Even for those that were not present at the time of the fire suffered physical symptoms of severe emotional distress as a result of the close, personal relationship that existed between such individuals and those that were injured / killed by the fire.
109. Defendant should have realized that their conduct involved an unreasonable risk of causing the severe emotional distress to Plaintiff.
110. Plaintiffs' severe emotional distress and mental injury are medically diagnosable and medically significant.
111. The Defendant's acts and/or inactions constitute the direct, proximate and/or substantial contributing cause of the extreme mental and emotional distress suffered by, and continued to be suffered by the Plaintiffs, and such damages were reasonably foreseeable consequences of the Defendant's acts.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT IX — NEGLIGENCE – FIRE SYSTEMS

112. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65.
113. Defendant owed a non-delegable duty and required to fulfill the terms of its contract to provide fire alarms and life safety systems that provided for the reasonable safety of the Property and of the residents receiving care.

114. Defendant negligently failed to adhere to the appropriate standard of care with respect to the following:
- a. the installation, inspection, maintenance, and certification of fire alarms and life safety systems;
  - b. providing early warning of dangerous conditions, to wit: the emergence of a destructive and deadly fire;
  - d. providing a reasonable measure of time though the activation of alarms to allow for the egress of residents receiving care from the residential units and from the Property before the obscuration by smoke of available paths of egress;
  - e. inspecting and certifying in good working order the fire sprinklers and fire pump;
  - f. providing operational fire extinguishing and fire suppression systems.
115. Defendant owed a duty of care to Plaintiffs to ensure the premises were reasonably safe and to provide adequate fire alarms life safety systems.
116. Defendant breached its duty to exercise reasonable care with regard to residents receiving care in the following manner, including but not limited to, the following specific acts or omissions:
- m. Defendant negligently installed, inspected, maintained, and certified building equipment and systems, including but not limited to mechanical, early warning, life safety, fire extinguishing and fire suppression, and emergency egress (i.e. elevators, fire alarms, smoke detectors, fire doors, fire sprinklers, fire pumps, fire extinguishing devices and fire suppression, and emergency egress signs and routes), each of which were designed and intended to allow residents receiving care to exit their residential units and the Property in the event of an emergency.
  - n. Defendant negligently advised, discussed, informed, counseled, protected, and warned GABRIEL HOUSE, ETZKORN, and the residents receiving care from dangerous conditions on the Property, including fire and safety hazards;
  - o. Defendant negligently failed to adhere to legislation, ordinances, building codes, housing codes, fire codes, safety codes, and licensing regulations;
  - p. Defendant negligently failed to enact and enforce policies, procedures, and industry best practices for the benefit of GABRIEL HOUSE, ETZKORN, and the residents receiving care;

- q. Defendant negligently selected, hired, employed, educated, and trained its agents, employees, and representatives;
  - r. Defendant negligently failed to educate, train, and warn its agents, employees, and representatives and further failed to educate, train, and warn GABRIEL HOUSE and ETZKORN regarding the industry-wide risk associated with smoking while receiving oxygen therapy and/or in proximity to oxygen therapy;
  - h. Upon information and belief, and before the occurrence of the subject fire, Defendant had actual and constructive knowledge of other incidents involving smoking within GABRIEL HOUSE, and on or about the Property, while residents receiving care were being administered or in close proximity to oxygen therapy;
  - n. Defendant negligently failed to follow regulations, laws, ordinances, and internal policies and procedures designed to ensure the safety, protection, and well-being of residents receiving care;
117. Defendant is also responsible for the acts of its agents, each of whom were acting in the course and scope of their employment and in furtherance of Defendant's interests.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT X – NEGLIGENCE PER SE – FIRE SYSTEMS

118. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65 and 112-117.
119. Pursuant to the rules and regulations of the State of Massachusetts including but not limited to the Massachusetts General Laws, the Executive Office of Elder Affairs (651 CMR 12.00 *et seq*), The Board of Elevator Regulations within the Division of Occupational Licensure (M.G.L. c. 143 and 524 CMR, including 524 CMR 35.00 which specifically incorporates the ASME A17.1, and 521 CMR 28.00), Massachusetts Comprehensive Fire Safety Code (527 CMR), the Massachusetts Building Code (780 CMR, which incorporates that International Building Code), NFPA 1, 13, 20, 25, 72, 99, and 101, Defendant owed a duty to construct, equip, maintain, and use the Property in accordance with the applicable laws, ordinances and

codes, so as to protect residential receiving care and invitees against dangerous conditions, unreasonable injury, and death.

120. The purpose of the laws, ordinances, and codes is to protect residents receiving care and invitees from the harmful effects of residential fires. Residents receiving care were members of the class of persons protected by these rules, regulations, laws, ordinances, codes, and standards.
121. Defendant knew or should have known that GABRIEL HOUSE and the Property were not constructed, equipped, maintained, and/or used in a manner that would protect residents receiving care and invitees, from the harmful effects of fire and that GABRIEL HOUSE and the Property were in violation of applicable rules, regulations, laws, ordinances, codes, and standards.
122. By violating the governing rules, regulations, laws, ordinances, codes, and standards, Defendant breached its statutory duties of care to residents receiving care.
123. Defendant's breach(es) of these duties was (were) the direct and proximate cause of the injury and death to the residents receiving care.
124. As a result of Defendant's breaches, wrongful acts, neglect, omissions, failures and/or default the residents receiving care are entitled to damages.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

#### COUNT XI — BREACH OF FIDUCIARY & CONTRACTUAL DUTIES – FIRE SYSTEMS

125. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65, 112-117, and 119-124.
126. A contract existed between FIRE SYSTEMS and GABRIEL HOUSE and/or ETZKORN, entitling GABRIEL HOUSE and/or ETZKORN to certain benefits, many of which also benefitted the residents receiving care and made the residents receiving care third-party beneficiaries to the contract.

127. Defendant owed fiduciary and contractual obligations to GABRIEL HOUSE and ETZKORN, and by extension to the residents receiving care.

128. By causing, creating, and allowing the persistence of conditions detrimental to the residents receiving care, which resulted in a dangerous, destructive, and deadly fire at GABRIEL HOUSE, Defendant breached its fiduciary duty, and further breached its contractual obligations.

WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

COUNT XII – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS – FIRE SYSTEMS

129. Plaintiffs re-allege and reincorporate by reference paragraphs 1 through 65, 112-117, 119-124 and 126-128.

130. Defendant's actions and/or inactions were intentional, willful, wanton, grossly careless, indifferent, reckless, and/or negligent, so as to go beyond all possible bounds of decency, and said conduct resulted in a fire which caused physical symptoms of severe emotional distress, including anxiety, distress, fear, aggravation, and inconvenience.

131. Even for those that were not present at the time of the fire suffered physical symptoms of severe emotional distress as a result of the close, personal relationship that existed between such individuals and those that were injured / killed by the fire.

132. Defendant should have realized that their conduct involved an unreasonable risk of causing the severe emotional distress to Plaintiff.

133. Plaintiffs' severe emotional distress and mental injury are medically diagnosable and medically significant.

134. The Defendant's acts and/or inactions constitute the direct, proximate and/or substantial contributing cause of the extreme mental and emotional distress suffered by, and continued to be suffered by the Plaintiffs, and such damages were reasonably foreseeable consequences of the Defendant's acts.



WHEREFORE, the Plaintiffs demand judgment for damages, costs, and prejudgment and post-judgment interest against the Defendant, and demand trial by jury of all issues so triable and such other relief the Court deems proper.

#### DAMAGES

135. Plaintiffs re-allege and reincorporate by reference all paragraphs above.

136. As a result of Defendants' conduct, Plaintiffs have sustained damages and injuries, including but not limited to physical injuries; emotional and mental anguish and suffering; loss of enjoyment of life; economic losses; past, present, and future medical expenses; past, present, and future pain and suffering; property damage; and loss of use of property.

137. Plaintiffs claim all other damages recoverable under Massachusetts law, shown at the trial of this matter;

45. Defendants' individual and collective actions and omissions were the proximate and/or substantial contributing cause of Plaintiffs' injuries and the damages described herein.

46. Defendants' individual and collective actions and omissions were the proximate and/or substantial contributing cause of the subject fire and of the resulting injuries to the Plaintiffs. The acts and/or omissions of Defendants constitute the combined, concurrent, and joint negligence and strict liability for which Defendants are jointly and/or severally liable to the Plaintiffs.

WHEREFORE, the Plaintiffs demand a jury trial and judgment, jointly and severally against the Defendants, and all damages allowed under law, including compensatory damages in an amount to be determined by the jury, together with all costs and prejudgment and post-judgment interest, and for any such other general relief which the Court and jury may deem appropriate.

#### JURY DEMAND

The Plaintiffs respectfully request and hereby demand a jury trial on all issues so triable.

Respectfully Submitted,  
On Behalf of the Plaintiffs,  
PATRICIA MARTIN, TERRY YOUNG,  
DONNA MURPHEY,  
By their Attorneys,  
MORGAN & MORGAN



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