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IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION  
CASE NO.:

GAIL MEISNER, as Personal Representative  
of the Estate of ROSE POHL, Deceased

Plaintiff,

vs.

THE ENCORE AT BOCA RATON  
REHABILITATION AND NURSING CENTER, LLC

Defendant

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COMPLAINT

COMES NOW, the Plaintiff, GAIL MEISNER, as Personal Representative of the Estate of ROSE POHL, Deceased, by and through her undersigned counsel, and hereby sues Defendant, THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC., and would allege as follows:

1. This action is within the jurisdiction of this court for damages in excess of Thirty Thousand and 00/100 Dollars (\$30,000.00), exclusive of interest and costs.
2. At all times material to this cause of action, ROSE POHL was an adult resident of Palm Beach County, Florida.
3. At all times material hereto, ROSE POHL was a person who was suffering from infirmities to the extent that she was impaired in her ability to adequately provide for her own care and protection.

4. ROSE POHL died on May 6th, 2020. At all times material to this action, GAIL MEISNER is the duly appointed personal representative of the Estate of ROSE POHL.

5. At all times material hereto, Defendant, THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC. was licensed and authorized to do business as THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC, a nursing home in Florida. The Defendant was in the business of owning, managing and maintaining nursing homes and related healthcare facilities, including THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC, located in Palm Beach County, Florida.

6. At all times material hereto, Defendant, THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC., was the licensee and owner of THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC.

7. At all times material hereto, Defendant, THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC., was subject to the provisions of Chapter 400 of Florida Statutes, which sets the standards for operating nursing homes such as THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC.

8. During ROSE POHL's residency at THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC., the staff and employees failed to develop an adequate care plan and properly monitor and supervise the care and treatment provided to ROSE POHL in order to prevent her from suffering the development and deterioration of respiratory failure and to prevent her from suffering the development and deterioration of malnutrition and dehydration.

9. As a direct result of THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC's acts and omissions, ROSE POHL suffered the development and

deterioration of respiratory failure and suffered the development and deterioration of malnutrition and dehydration.

10. This is a claim under Florida Statute §400 for violation of ROSE POHL resident's rights, based solely on custodial care issues, and any presuit pursuant to Chapter 766 is unnecessary.

11. Plaintiff has complied with the nursing home presuit provisions set forth in Florida Statutes §400.0233.

12. Plaintiff has satisfied all conditions precedent to the filing of this action.

13. Plaintiff's counsel certifies by signing this Complaint that a good faith investigation into the merits of this claim was made.

14. It has been necessary for GAIL MEISNER to retain the undersigned firm of Ford, Dean & Rotundo, P.A., to prosecute this action and has agreed to pay said firm a reasonable fee for its services.

**COUNT I**

**CHAPTER 400 CLAIM AGAINST DEFENDANT,**  
**THE ENCORE AT BOCA RATON**  
**REHABILITATION AND NURSING CENTER, LLC**

Plaintiff hereby re-alleges paragraphs one (1) through fourteen (14) as if fully stated herein and further alleges:

15. Defendant has a statutorily mandated responsibility to ROSE POHL to provide her with her nursing home resident's rights, as set forth in Florida Statute §400.022, which responsibility included, but was not limited to, the following:

- (a) providing adequate and appropriate healthcare and protective and support services;

- (b) preventing mental and physical abuse of ROSE POHL
- (c) complying with regulations for the operation of nursing homes promulgated by the Department of Health and Rehabilitative Services and contained in the Florida Administrative Code 59A-4; and
- (d) treating residents courteously, fairly, and with the fullest measure of dignity.

16. That Defendant's responsibilities to ROSE POHL, as outlined in Florida Statutes §400.022, are non-delegable and such that Defendant had direct liability for violations, deprivations and infringements by any person or entity under Defendant's control, direct or indirect, including their employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, agencies or pools, or caused by Defendant's policies, and procedures, whether written or unwritten, or common practices.

17. That in addition to Defendant's direct responsibility under Florida Statute §400.022 and as alleged in the preceding paragraph, Defendant had vicarious liability for the acts and omissions of all persons or entities under Defendant's control either direct or indirect including its employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, agencies or pools causing any deprivations or infringements of ROSE POHL resident's rights as set forth in Florida Statutes §400.022.

18. That the duty alleged in the immediately preceding paragraphs include, but are not limited to, proper training and supervision; proper hiring, background and referral checks; and proper retaining and dismissing of employees, agents, consultants and independent contractors, as well as providing adequate staffing.

19. That notwithstanding the responsibility of Defendant to provide ROSE POHL with her statutorily mandated nursing home resident's rights, ROSE POHL was deprived of such rights by the acts or omissions of Defendant's agents and employees which include, but are not limited to, the following:

- a) failure to properly supervise ROSE POHL;
- b) failing to provide adequate and appropriate protective and support services to ROSE POHL ;
- c) failing to develop, implement, and update an adequate and appropriate resident care plans to meet the custodial needs of ROSE POHL ;
- d) failing to maintain records which contain sufficient and accurate information to justify the diagnosis and treatment and to document the results, including at a minimum documented evidence of assessments of the needs of the resident, of establishment of appropriate plans of care and treatment, and of the care and services provided;
- e) failing to appropriately monitor ROSE POHL and recognize significant signs and symptoms of change in her health condition, such as suffering the development and deterioration of respiratory failure and suffering the development and deterioration of malnutrition and dehydration.
- f) failing to properly notify the family and physicians of ROSE POHL of significant changes in her health status, such as suffering the development and deterioration of respiratory failure and suffering the development and deterioration of malnutrition and dehydration.
- g) failing to protect ROSE POHL from foreseeable harm, including but not limited to suffering the development and deterioration of respiratory failure and suffering the development and deterioration of malnutrition and dehydration;
- h) failing to properly supervise staff;
- i) failing to properly train staff;
- j) improper retention of staff;
- k) Inadequate staffing;

- l) failing to protect the dignity of ROSE POHL;
- m) failing to protect the privacy of ROSE POHL;
- n) failing to follow physician orders;
- o) failing to properly chart on the resident pursuant to Florida Statute § 400, F.A.C. 59-A; and 42 C.F.R. 483; and,
- p) failure to timely transfer the resident to the hospital.

20. As a direct and proximate result of the failure of the Defendant to comply with the requirements of Florida Statute §400.022, and to provide adequate and appropriate and protective support services, ROSE POHL suffered damages, including loss of dignity; humiliation; bodily injury; pain and suffering, disability, physical impairment; disfigurement; mental anguish, inconvenience; loss of capacity to enjoy life; discomfort; aggravation of existing diseases or physical defect; medical, hospital and nursing expenses and died on May 6, 2020.

21. The survivors of ROSE POHL are as follows:

- a) Gail Meisner, Daughter
- b) Phillip Pohl, Son

22. Each survivor may recover the value of lost support and services from the date of the decedent's injury to her death, with interest, and future loss of support and services from the date of death and reduced to present value.

23. Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost of parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury.

24. The decedent's personal representative may recover for the decedent's estate the following:

- a) loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest, loss of the prospective net accumulations of an estate which might reasonably have been expected but for the wrongful death, reduced to present money value may also be recovered.
- b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against her or his estate or that were paid by or on behalf of decedent.

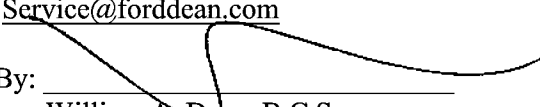
**WHEREFORE**, Plaintiff, GAIL MEISNER, as Personal Representative of the Estate of ROSE POHL, Deceased, demands judgment against THE ENCORE AT BOCA RATON REHABILITATION AND NURSING CENTER, LLC for all compensatory damages allowed by law for the deprivation of ROSE POHL's rights as stated above, and further demands prejudgment interest and a trial by jury on all issues triable as a matter of right. Plaintiff reserves the right to amend to allege a cause of action for punitive damages at a later date.

**DEMAND FOR JURY TRIAL**

The Plaintiff hereby demands trial by jury of all issues so triable as of right.

DATED this 25th day of May, 2021.

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