



1.2 This suit is brought at the request of the Commissioner of The Texas Department of Aging and Disability Services (“DADS”) as authorized by Chapter 242 of the Texas Health and Safety Code.

## II. PARTY DEFENDANTS

2.1 Defendant DIVERSIFIED HEALTH CARE - DALLAS LLC is a foreign for-profit corporation incorporated in Louisiana and engaged in business in Texas and doing business as BROOKHAVEN NURSING CENTER (“the facility”) which is located at 1855 Cheyenne, Carrollton, Denton County, Texas 75010. Defendant has registered with the Texas Secretary of State as a foreign corporation doing business in Texas. DIVERSIFIED HEALTH CARE - DALLAS LLC maintains an address at 10925 Perkins Rd Suite C, Baton Rouge, Louisiana 70810, East Baton Rouge Parish, Louisiana. **Defendant DIVERSIFIED HEALTH CARE - DALLAS LLC may be served with process through its Registered Agent for Service, C T CORPORATION SYSTEM at 350 North St. Paul St., Dallas, Dallas County, Texas 75201.**

2.2 Defendant DIVERSIFIED HEALTH CARE, LLC is a foreign for-profit corporation incorporated in Louisiana and engaged in business in Texas as the operating and managing corporation for DIVERSIFIED HEALTH CARE - DALLAS LLC. Defendant DIVERSIFIED HEALTH CARE, LLC is a controlling person as defined in Chapter 242 of the Texas Health and Safety Code and has not registered with the Texas Secretary of State as a foreign corporation doing business in Texas. *(See Certificate of Fact is attached hereto and incorporated herein as Exhibit A.)* The Defendant DIVERSIFIED HEALTH CARE, LLC provides operating and management services for Defendant DIVERSIFIED HEALTH CARE - DALLAS LLC in the operation of BROOKHAVEN NURSING CENTER. Its home office is also located at 10925 Perkins Rd Ste. C,

Baton Rouge, East Baton Rouge Parish, Louisiana 70810. **Defendant DIVERSIFIED HEALTH CARE, LLC may be served with process by serving the Secretary of State for the State of Texas, 1019 Brazos Street, Austin, Texas 78701, as its agent of service for process because Defendant DIVERSIFIED HEALTH CARE, LLC has not designated or maintained a resident agent for service of process in Texas, as required by statute. Tex. Civ. Prac. & Rem. Code Ann. §§ 17.044(a)(1) and (b), and 17.045. Its registered agent for service in the State of Louisiana is STEPHEN G. MCCOLLISTER, 8440 Jefferson Highway, Ste. 301, Baton Rouge, East Baton Rouge Parish, Louisiana 70809.**

2.3 Defendant MARTIN M. STOTT is a resident of Louisiana and co-owner, member, officer, and director of DIVERSIFIED HEALTH CARE, LLC and DIVERSIFIED HEALTH CARE - DALLAS LLC and is a controlling person as defined in Chapter 242 of the Texas Health and Safety Code.<sup>1</sup> **DEFENDANT MARTIN M. STOTT may be served with process by serving him with process at his residence at 15035 Memorial Tower Dr., Baton Rouge, East Baton Rouge Parish, Louisiana 70810.**

2.4 Defendant BRIAN A. MAY is a resident of Louisiana and co-owner, member, officer, and director of DIVERSIFIED HEALTH CARE, LLC and DIVERSIFIED HEALTH CARE - DALLAS LLC and is a controlling person as defined in Chapter 242 of the Texas Health and Safety Code. **DEFENDANT BRIAN A. MAY may be served with process by serving him with process at his residence at 17525 Hazeltine Dr., Baton Rouge, East Baton Rouge Parish,**

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<sup>1</sup>Texas law is well settled that corporate agents may be held personally responsible and individually liable for wrongful acts. It is not necessary to pierce the corporate veil in order to impose personal liability. *Leyendecker v. Wechter*, 683 SW2d 369 (Tex. 1984). Liability of such a corporate officer is based on his own actions not his status as an agent. It is not necessary for such an employee to act knowingly or intentionally in order to be personally liable. *Miller v. Keyser*, 90 SW3d 712 (Tex. 2002). Moreover, TEX. HEALTH & SAFETY CODE § 247.065(e) explicitly provides that in these suits: "...the state may seek satisfaction from any owner, controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit..."

### III. DISCOVERY CONTROL PLAN

3.1 Pursuant to Texas Rule of Civil Procedure 190.1, discovery is intended to be conducted under Discovery Level 2.

### IV. AUTHORITY

4.1 Plaintiff has authority to bring this action under Chapter 242 of the Texas Health and Safety Code and the authority granted to the Attorney General of Texas under the Constitution and laws of the State of Texas. TEX. HEALTH & SAFETY CODE ANN. § 242.065

4.2 This action is also brought by Plaintiff in the public interest under the authority granted by TEX. BUS. CORP. ACT ART. 8.01(A) *et seq.*, upon the grounds that no foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State.

### V. VENUE

5.1 Venue of this suit is proper in Denton County under §15.002(a)(1) of the Texas Civil Practice and Remedies Code and under § 242.063(d) of the Texas Health and Safety Code since all or a substantial part of events or omissions giving rise to this claim occurred in Denton County.

### VI. PURPOSE OF SUIT

6.1 The purpose of this suit is to obtain an injunction and to collect civil penalties jointly and severally from Defendants because: Defendants have violated minimum standards applicable to nursing homes in Texas, threatening the health and safety of residents who depend on Defendants for the basic amenities of a decent human existence and the Defendant s have failed to register with

the Secretary of State prior to engaging in business in Texas. The State seeks civil penalties pursuant to Section 242.065 of the Texas Health and Safety Code and Article 8.18(c) of the Texas Business Corporation Act. Additionally, the state seeks a temporary and/or permanent injunction to enjoin the Defendants from continued violation of the standards or licensing requirements prescribed by said Statutes.

## **VII. PARTICULAR APPLICABLE LAW**

7.1 Chapter 242 of the Texas Health and Safety Code authorizes DADS to adopt, publish, and enforce minimum standards for nursing facilities relating to the quality of life, quality of care, and residents rights that ensure the health, safety, welfare and comfort of the facility residents. TEX. HEALTH & SAFETY CODE ANN. § 242.037. Those standards are found in 40 TEX. ADMIN. CODE, Chapter 19.

7.2 Section 19.701 of the Texas Administrative Code provides a facility must care for its residents in a manner and in an environment that promotes the maintenance or enhancement of each resident's quality of life.

7.3 Section 19.901 of the Texas Administrative Code provides that each resident must receive, and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, as defined by and in accordance with the comprehensive assessment and plan of care. Section 19.901(11)(F) further provides that residents with special needs must receive proper treatment and care for special services including respiratory care.

7.4 Section 19.1701(2)(B) of the Texas Administrative Code provides that when life support systems are used, the facility must provide emergency electrical power with an emergency

generator located on the premises.

7.5 Section 19.1001 of the Texas Administrative Code provides that the facility must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable mental, and psychosocial well-being of each resident as determined by resident assessments and individual plans of care.

7.5 Section 242.065 of the Texas Health and Safety Code provides that a person who violates Chapter 242 or a rule adopted under that Chapter is liable for a civil penalty of not less than \$1,000 or more than \$20,000 for each act of violation if DADS determines that the violation threatens the health and safety of a resident. The statute also provides that each day of a continuing violation constitutes a separate ground for recovery. The statute also makes the owner or other controlling person liable for such violations.

7.6 Section 242.063 of the Texas Health and Safety Code provides that if DADS reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident, the Court may grant injunctive relief to prohibit a person from violating the standards or licensing requirements prescribed by said Chapter, and upon a finding that the person is violating or threatening to violate the standards or licensing requirements, the Court may grant other injunctive relief warranted by the facts.

7.7 Section 242.0021 of the Texas Health and Safety Code defines a "Controlling Person" as a person who has the ability, acting alone or in concert with others, to directly or indirectly influence, direct or cause the direction of the management, expenditure of money, or policies of an institution or other person.

7.8 Section 242.002(10) of the Texas Health and Safety Code defines an "Institution" as

an establishment that;

- A. furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and
- B. provides minor treatment under the direction and supervision of a physician licensed by the Texas Medical Board, or other services that meet some need beyond the basic provision of food, shelter, and laundry.

7.9 Section 242.002(12) of the Texas Health and Safety Code defines “Resident” as an individual, including a patient, who resides in an institution.

7.10 Section 242.002(11) of the Texas Health and Safety Code defines “Person” as an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

7.11 Section 242.002(6) of the Texas Health and Safety Code defines “Facility” as an institution.

7.12 Article 8.01 of the Texas Business Corporation Act provides that no foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. No foreign corporation shall be entitled to procure a certificate of authority under this Act to transact in this State any business which a corporation organized under this Act is not permitted to transact. TEX. BUS. CORP. ACT ART. 8.01(A).

7.13 Section 8.18 of the Texas Business Corporation Act provides that a foreign corporation which transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a

certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this State as required by law and thereafter filed all reports required by law, plus all penalties imposed by law for failure to pay such fees and franchise taxes. In addition to the penalties and payments prescribed, such a corporation shall also be liable to this State an amount not less than One Hundred Dollars (\$ 100) nor more than Five Thousand Dollars (\$ 5,000) for each month or fraction thereof it shall have transacted business in this State without a certificate. The Attorney General is required to bring suit to recover all amounts due this State under the provisions of this section. TEX. BUS. CORP. ACT ART. 8.18(C).

7.14 The State is exempt from filing a bond under section 6.001 of the Civil Practice and Remedies Code.

7.15 All other law of the State of Texas, including the Texas and United States constitutions together with common law insofar as it has not been abrogated or superceded, is applicable to this cause.

## **VIII. VIOLATIONS OF TEXAS HEALTH AND SAFETY CODE AND THE TEXAS ADMINISTRATIVE CODE**

8.1 Specific pleading of the facts at issue requires description of conditions and occurrences of an intimate and private nature involving individuals who are not parties to this suit. Disclosure of their identities would subject them and their families to needless and painful public scrutiny, intruding into their privacy without serving the ends of justice. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 242.126(g) and § 242.127 and 40 TEX. ADMIN. CODE § 19.2010(a)(1). Consequently, to protect their identities, the residents of the facility are referred to hereinafter by

Resident number, instead of by name.

8.2 Defendants' facility is licensed by DADS to Defendant, DIVERSIFIED HEALTH CARE - DALLAS LLC d/b/a BROOKHAVEN NURSING CENTER, as a nursing facility with a maximum capacity for 180 residents. DADS surveyors conducted a combination complaint investigation and annual licensing investigation of Defendants' facility, BROOKHAVEN NURSING CENTER at 1855 Cheyenne, Carrollton, Denton County, Texas, 75010, from April 8, 2008, through April 15, 2008. Based on the surveyors' reported findings, DADS determined that the failure of the facility to meet the licensing standards applicable to nursing homes threatened residents' health and safety.

8.3 During the licensing inspection, on April 10, 2008, Defendant's facility experienced a power outage which lasted from 3:00a.m. until 11:03a.m. The power outage immediately disabled the oxygen supply to the seventeen (17) oxygen-dependent residents of the facility. No corrective action was taken with regard to the "300 Unit", which contained five (5) oxygen-dependent residents; Residents #13, #17, #18, #22, and #37. Three (3) of these residents (Residents #13, #17, and #18) remained connected to a powerless oxygen system until approximately 6:30a.m., three and a half hours after the outage began. Resident #37 was provided with portable oxygen two hours after the outage at approximately 5:00a.m..

8.4 The remaining oxygen-dependent resident, Resident #22, was found dead at 7:00a.m., four hours after the outage began. Resident #22 was found connected to a still-powerless oxygen system. Resident #22 was oxygen-dependent and was already considered medically compromised due to a known medical history of Chronic Pulmonary Disease and Congestive Heart Failure, as well as a history of lower than normal oxygen levels and difficulty breathing.

8.5 Defendants' LVN II charge nurse for the "300 Unit" failed to immediately connect the available emergency oxygen supply for any of the five units. Defendant's LVN II charge nurse entered Resident #22's room at approximately 6:00a.m., prior to the resident's death. At that time Defendants' LVN II charge nurse witnessed Resident #22 "thrashing around in bed" but did not adequately assess Resident #22's needs, determining instead that "the resident was simply uncomfortable because the room was extremely hot." Defendants' LVN II charge nurse disclaimed awareness that Resident #22 was oxygen-dependent but did not take reasonable affirmative action to discover the existence of any special needs such as oxygen-dependence, allegedly "because it was too dark in the room due to the outage."

8.6 After the outage, DADS' surveyors determined that the facility contained the necessary physical resources to combat a power outage, with ample oxygen stored in portable canisters, and a functioning back-up generator which provided power to specially red painted power outlets throughout the "300 Unit." However, the LVN II charge nurse for that unit had received no instruction on emergency protocols for such a situation, and her personnel file indicated a lack of any documents relating to such training in her file. DADS surveyors determined that the facility demonstrated a pattern of noncompliance at a severity level which resulted in "actual harm."

8.7 As a result of the investigation, the Defendants were cited by DADS for the following violations which they determined presented an immediate and remaining threat to the resident's health and safety:

- A. Failure to provide services meeting professional standards of quality as required by 40 Tex. Admin. Code § 19.802(f)(1);
- B. Failure to ensure that residents receive proper treatment and care for special services

including respiratory care as required by 40 Tex. Admin. Code § 19.901(11)(F);

- C. Failure to train all employees in emergency procedures when they begin to work in the facility and periodic review of the procedures with existing staff along with unannounced staff drills exercising those procedures as required by 40 Tex. Admin. Code § 19.1914(b);

All in violation of Texas Health and Safety Code 242.037 as set forth in the DADS Statement of Licensing Violations. (*See Statement of Licensing Violations attached hereto and incorporated herein as Exhibit B.*)

#### **IX. VIOLATIONS OF THE TEXAS BUSINESS CORPORATION ACT**

9.1 By providing operations and management services to their Texas-based facility, DIVERSIFIED HEALTHCARE - DALLAS LLC d/b/a BROOKHAVEN NURSING CENTER, through their Louisiana management corporation, DIVERSIFIED HEALTHCARE - LLC., the Defendants have engaged in the operation of a business of a foreign corporation in Texas in violation of TEX. BUS. CORP. ACT ART. 8.01(A), by transacting business in the State of Texas without authority to do so. This violation occurred over a period of at least 24 months, from 2006 to the present.

9.2 For unlawfully transacting business in the State of Texas, Defendants are liable to the State for the years 2006 to 2008 in an amount equal to all fees and franchises taxes, which would have been imposed by law upon Defendants had they duly applied and received a certificate of authority to transact business in this State and thereafter filed all reports required by law. *See* TEX. BUS. CORP. ACT ART. 8.18(C). The Defendants are further liable to the State of Texas for an amount not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) for each

month or fraction thereof Defendant transacted business in this State without a certificate. *See id.*

## **XI. DISCOVERY REQUESTS**

11.1 **INSTRUCTIONS:** You must respond to the request for disclosure within fifty (50) days of service of this request. You must produce all the requested documents within fifty (50) days after service of this request.

11.2 **Delivery.** All of the responses, documents, discovery and items specified below are to be produced within fifty (50) days after the date of service of process of this discovery request at the Consumer Protection Division, Office of the Attorney General, 1412 Main Street, Suite 810, Dallas, Texas 75202. All of the documents and discovery items specified below are to be organized and labeled to correspond with each particular request.

11.3 **Definitions.** “You,” “Your,” “ facility,” “Brookhaven”, “Defendants” means DIVERSIFIED HEALTH CARE, LLC, DALLAS d/b/a BROOKHAVEN NURSING CENTER, DIVERSIFIED HEALTH CARE, LLC, BRIAN A. MAY, individually and MARTIN A. STOTT, individually, and any partnerships or corporations wholly or partially owned by any Defendant and their subsidiaries, merged or acquired predecessors; affiliates; successors; divested facilities; divisions, or subsidiaries; present and former partners, officers, agents, employees; and all persons acting or purporting to act on behalf of Defendant or persons exercising or purporting to now or at one time exercise discretion, make policy and decisions, or participate in any of the foregoing functions on behalf of Defendant.

11.3 “Your Facility” refers to Brookhaven Nursing Center at 1855 Cheyenne, Carrollton, Texas 75010, Denton County, Texas .

11.4 “DADS” means the Texas Department of Aging and Disability Services.

11.5 The terms “document” or “documents” mean and include without limitation, any writing, letter, memorandum, correspondence, note, receipt, canceled check, invoice, ledger, sheets, carbon or photographic reproduction of any of the foregoing, photograph, film, or magnetic recording or any other tangible object which permanently or semi-permanently records information for later use.

11.6 Related to,” “Relating to” and "evidencing" means and includes any and all information that in any manner or form is relevant in any way to the subject matter in question, including without limitation, all information that, directly or indirectly, contains, records, reflects, summarizes, evaluates, refers to, indicates, comments upon or discusses the subject matter or that in any manner states the background of, or were the basis or bases for, or that record, evaluate, comment upon, relate to, or were referred to, relied upon, utilized, generated, transmitted, or received in arriving at your conclusion(s), opinion(s), estimate(s), position(s), decision(s), belief(s), or assertion(s) concerning the subject matter in question.

11.7 The terms “incident in question” or “occurrence in question” or “violations in question” mean and refer to any and all events and/or acts involving the violation of the Texas Health and Safety Code in the investigation conducted by DADS on or about April 8, 2008 through April 15, 2008 which are described in section VIII of this petition.

11.8 As used herein, the words “and” and “or” shall be construed either conjunctively or disjunctively, as required by the context to bring within the scope of these requests for production any answer, response or document that might be deemed outside its scope by another construction.

11.9 “Possession, custody and control” as used herein means possession, custody and control, including constructive possession, such that a witness need not have actual physical

possession of the document or thing, as long as the witness has a right (superior to that of the requesting party) to compel the production from a third party entity (including an agency, subsidiary, division, authority or representative) having physical possession of the item.

11.10 Residents Nos. 13, 17, 18, 22, and 37 refer to the residents affected by the violations/incidents in question, of the same numbers in the DADS Statement of Licensing Violations with the exit date of April 15, 2008. (*See Exhibit B.*)

11.11 **Electronic Data.** If the requested information is stored only on software or otherwise is “computer-based information,” you are directed either to produce the raw data along with codes and programs necessary for translating it into usable form by The Office of the Attorney General of Texas, or to produce the information in a finished usable form. In either case, you must include all necessary glossaries, keys, indices, and software necessary for interpretation of the material.

11.12 **Time Period.** The time period covered by this Discovery Request, unless specified otherwise, is from January 2007 through the present.

11.13 **Claims of Privilege.** If you claim any document which is requested in this Discovery Request is privileged from exposure or otherwise beyond the scope of discovery, for each such document:

- A. Identify the document, specifying the date or approximate date of preparation, the nature of its content, the name of the author, and the name and business address of its custodian.
- B. Specify the exact nature of the privileged claim, referring to the specific rule, statute, or law relied on by you in asserting the privilege.

11.14 **Document Destruction.** It is requested that all documents, electronic data and/or

other data compilations that might substantially bear on the subject matter of this litigation be preserved and that any ongoing process of document/data destruction involving such documents and/or data cease. In those instances where document destruction has already taken place, it is requested that the destroyed and/or purged documents and/or electronic data information that would have been relevant to the following discovery requests but for their destruction be “identified” as well as the date of destruction and the individual authorizing, ordering and/or carrying out the destruction. This request similarly pertains to all relevant documents that come into your possession after the date this request is served.

**11.15 Lost or Destroyed Documents.** If any document for which production is requested has been lost or destroyed, for each such document:

- A. State the circumstances relating to loss or destruction of such documents;
- B. The approximate date of the loss or destruction;
- C. A reasonably complete description of the contents of said documents; and
- D. Each and every person who has or may potentially have knowledge of relevant facts concerning the circumstances of said document’s loss or destruction, and said person’s last known address.

**11.16 REQUEST FOR DISCLOSURE.** Pursuant to TEXAS RULE OF CIVIL PROCEDURE 194, Defendants are requested to disclose to Plaintiff, the State of Texas, within fifty (50) days of service of this request, the information described in TEX. R. OF CIV. P. 194.2(a)-(l).

**11.17 REQUEST FOR PRODUCTION.** Pursuant to TEXAS RULE OF CIVIL PROCEDURE 196, Plaintiff, the State of Texas, in the above-entitled and numbered cause, requests that Defendants produce for inspection and copying the information, documents, and things described in the

subsequent paragraphs.

11.18 **Produce.** Produce a copy of all correspondence between you and/or your employees, agents, or servants, and the following:

- A. DADS;
- B. Physicians and/or other health care professionals concerning the violations in question;
- C. Your Board of Directors, employees, officers and/or health care providers concerning the violations in question.
- D. Any other third party other than your attorney(s) concerning the violations in question.

11.19 Produce a copy of any and all notes, correspondence or other documents/documentation relating to the violations in question and/or DADS, generated or received by you, your agents or employees in the normal course of affairs, before receiving formal notice by Plaintiff of the instant suit.

11.21 Produce a copy of any and all photographs, slides, videotapes and/or motion pictures and/digital images which relate or depict any aspect of the violations in question.

11.22 Produce a copy of the time work records of all facility personnel who were responsible for providing care to Residents Nos. 13, 17, 18, 22, and 37 at the time of the violation.

11.23 Produce a copy of any and all incident reports or any other kind of report concerning the violations in question.

11.24 Produce a copy of any and all documents concerning any in-house investigations conducted by or on your behalf or in which you participated in, in the ordinary course of business, concerning the violations in question cited by DADS, including but not limited to all plans of correction, and other documents, reports, correspondence, photographs, graphs, and/or videotapes

generated or obtain in connection thereto. This request is limited to those documents generated or obtained prior to your formal notification by Plaintiff, State of Texas of the instant suit.

11.25 Produce a copy of any and all documents referred to or otherwise used to refresh recollections about the violations in question, in providing answers to oral or written discovery questions or requests in this case.

11.26 Produce copies of your Articles of Incorporation of Organization, By-Laws, organizational charts, any and all assumed name certificates currently in effect, and all documents of title and/or signifying right of possession of the premises operated as Brookhaven Nursing Center.

11.27 Produce a copy of any and all books, treatises, journals, abstracts and/or articles you or your agents, employers of representatives have consulted, reviewed and/or referred to in relation to the violations in question.

11.28 Produce a copy of any personnel handbook which you distributed or handed out to any and all personnel prior to the incidents in question, who were involved in the incidents in question.

11.29 Produce a copy of any and all of your written rules, regulations, policies or procedures concerning your supervision or regulation of the care and treatment of residents by your nurse, nurse practitioners, health care providers, agents, servants or employees.

11.30 Produce a copy of all written minutes and/or other records of any regular or special meetings of your governing body or any committee or subcommittee thereof regarding the incident/violations in question.

11.31 Produce a copy of all documents, including work schedules, duty rosters (including assignments) and/or time cards of each and every employee, including every nurse, nurse

practitioner, health care provider, attendant, and/or any other kind of personnel on duty who provided care and/or treatment, at Brookhaven as employed by you from April 1, 2008 through April 30, 2008.

11.32 Produce a copy of the full and complete contents of the personnel file of each of your employees who provided services relating to the violations in question. This request includes, but is not limited to, the following: evaluations, applications for employment, contracts, agreements, reprimands, criticisms, incident reports, disciplinary records, licensing documents, attendance and curriculum records of in-service training programs, and continuing education information.

11.33 Produce a copy of all resident billing and accounting records or documents of your facility during the six months prior and up to the six months following the violations in question.

11.34 Produce a copy of your list of medical terminology abbreviations used by you in the care of residents in your facility.

11.35 Produce a copy of a list of all in-service education programs offered for all of your employees from two years prior to the violations in question up to and including April 2008.

11.36 Produce a copy of the true and correct schematics of your facility as it existed in April of 2008. If then schematics are not available, then produce the blueprints.

11.37 Produce a copy of all contracts, general policies, medical staff rules and regulations in effect at the time of the violations in question for physicians, dieticians, nutritionists, therapists, nurses, nurse assistants, aides and other employees and independent contractors providing services to your facility.

11.38 Produce a copy of all facility service and medical records, including but not limited to the comprehensive assessment and plan of care, for each resident affected by the incidents/violations in question.

11.39 Produce a copy of all materials related to every facility standard, policy, protocol, suggestion, recommendation, rule, regulation, guideline, memorandum, procedure, manual, reference guide, practice, custom, correspondence, letter, note and any and all other written documents which were in effect at the time of the incident in question, whether written by you or furnished by another person, related in any way to disaster or emergency situations, including but not limited to procedures in the event of an electrical power outage, procedures to utilize emergency electrical generators, and procedures for providing emergency oxygen supplies to oxygen dependent residents.

11.39 Produce a copy of any and all documents relating to patients or patients' relatives who have made complaints, criticisms, or claims against you relating to the care provided by and/or at your facility from January 2006 to present.

11.40 Produce a copy of all statements previously made by the State, its employees, agents and representatives related to the incident in question or this lawsuit.

11.41 Produce a copy of any and all written statements given by witnesses pursuant to the DADS investigation of April 8 through April 15, 2008.

## **XII. PRAYER**

12.1 For these reasons, the State asks that after a trial on the merits, it recover judgment against Defendants, jointly and severally, for;

- A. Civil penalties of not less than \$1,000 nor more than \$20,000 for each violation that threatened the health and safety of a resident and for each day such violation occurred. TEX. HEALTH & SAFETY CODE ANN. §242.065;
- B. All of the fees and franchise taxes which would have been imposed upon the corporation, DIVERSIFIED HEALTH CARE, LLC, had it duly applied for and received a certificate of authority to transact business in this state. And further that the corporation forfeit to this State an amount not less than \$100 nor more than \$5,000 for each month in which the Defendant conducted business in the State without certification. TEX. BUS. CORP. ACT ART. 8.18(C);

- C. A temporary and permanent injunction to issue against Defendants enjoining them jointly and severally, their agents, servants, employees, attorneys, and all persons acting in concert or participation with them who receive actual notice of the order, from continued operation in violation of law, standards and licensing requirements;
- D. Statutory attorneys fees pursuant to § 402.006(c);
- E. Post-judgment interest on the penalties awarded at the maximum rate allowed by law; and
- F. Costs of court and all other relief to which Plaintiff may be entitled.

Respectfully submitted,

GREG ABBOTT  
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**ATTORNEYS FOR PLAINTIFF**

LIST OF ATTACHED EXHIBITS:

Exhibit A -Certificate of Fact

Exhibit B -DADS Statement of Licensing Violations